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“Droit” or “devoir d’ingérence”¹ and the right to assistance: the issues involved

by Yves Sandoz

Humanitarian issues have hardly ever before been given so much publicity by debates over what some people have described as the “droit” or “devoir d’ingérence”¹, which is then linked with the notion of the right to assistance. At the various levels at which the problem is perceived, the public at large, the media and legal experts have become involved in lively and even heated debates.

This is not a bad thing in itself; such strong feelings do not pass unnoticed by governments and may thus further the progress of humanitarian issues, as some important questions have indubitably been raised and, for many people, still remain unresolved.

On the other hand, it is regrettable that apart from some genuine questions, much energy has been expended on the basis of misunderstandings.

At this stage we therefore consider it useful to clarify the issues, not because we claim to be able to resolve them all, but in order to lay the foundations for a straightforward debate. It is just as well that experts on humanitarian issues should participate in lively debates. It is regrettable that they should seek to engage in unproductive polemics.

In reality, the source of these “unproductive polemics” is threefold: jurists have been presented with an undefined concept,¹ whereas it is

¹ One of the proponents of the “droit d’ingérence”, Professor Bettati, himself notes that “l’ingérence” does not denote a given juridical concept in “Un droit d’ingérence”, *RGDIP*, 1991/3, pp. 639-670, *ad* p. 641. Furthermore there is, to our knowledge, no official English translation of the terms “droit d’ingérence” and “devoir d’ingérence” which accurately conveys their French connotation. Referring to recent English-language works on the subject, we noted that some authors use the literal translation of these concepts, i.e., “right to interfere/duty to interfere”, others prefer to use “right to intervene/duty to intervene”. As we consider that these terms do not render exactly the meaning of “droit/devoir d’ingérence” and are not interchangeable,

not possible to discuss a point of law properly without defining it; almost everything and the antithesis thereof has been said in the public debate that was started at the same time; finally, this undefined concept has been applied to two entities which are not comparable, namely States and humanitarian organizations.

Let us endeavour simply to see what concepts are involved.

1. States' "*droit d'ingérence*"

Having already pointed out in another publication that the term "*droit d'ingérence*" contained a contradiction in itself,² we do not intend to dwell on an analysis of the term but shall instead seek to identify the ideas expressed about it.

Established beyond doubt is the right for States to open their eyes. A State may ask itself what is happening in the other States. Even if the latter frequently still take offence, this right is unquestioned. Machinery to this effect has been set up by and for all States, particularly within the framework of the Economic and Social Council: the Commission on Human Rights adopts, in this respect, the very broad basis of human rights observance.

In the likewise broad sphere of disputes or situations that are likely to endanger international peace or security, any member of the United Nations may bring a dispute to the attention of the Security Council.³ Finally, machinery destined to extend still further this right of inspection has been, or is in the process of being, established by virtue of conventions binding on a large number of States, such as the Committee on Human Rights within the framework of the International Covenant on Civil and Political Rights and its Optional Protocol, of 1966; or the procedures relating to inspections on request provided for in Article IX (consultations, cooperation and fact-finding) of the draft Convention on Chemical Weapons, which will probably be adopted very soon; not to mention regional agreements.

we have chosen to leave these concepts in French in the present article, given that their meaning and scope are explained in the article.

See also *International Law and the Use of Force by States*, Ian Brownlie, Oxford University Press, 1968, pp. 338-342.

² See Sandoz, Yves, "Usages corrects et abusifs de l'emblème de la croix rouge et du croissant rouge", in *Assisting the Victims of Armed Conflicts and Other Disasters*, ed. Frits Kalshoven, Nijhoff, pp. 117-125, *ad* pp. 118-119.

³ Cf. Art. 35, para. 1 of the Charter of the United Nations.

But is there a right to take action when this "right of inspection" reveals things that are unacceptable? Here again certain distinctions must be drawn. It is undeniable that States may act within the scope of their sovereignty and if they abstain from using force: apart from the obligations imposed on a State by international conventions or international custom, nothing prevents it from refusing to co-operate with a State whose government is behaving in a manner which it deems unacceptable.

Furthermore the procedures laid down in international conventions, and primarily in the Charter of the United Nations, permit sanctions in certain cases.

The difficult question is therefore whether, beyond the unquestionable sphere of their sovereignty and of their possible participation in international or regional machinery, States still have a right of *ad hoc* intervention involving the use of force in certain particularly serious cases.

Apart from the decisions taken by the Security Council, the system established by the Charter of the United Nations does not provide for the use of force on grounds other than legitimate self-defence. Since the latter is either individual or collective, it does permit the intervention of States which are not directly attacked, but it is clearly restricted to the cases in which "an armed attack" occurs against a member State.⁴

The historical concept of "humanitarian intervention"⁵, which authorized armed intervention by a State on the territory of another State in order to terminate serious and extensive human rights violations, has no place in the system established by the UN. Legal doctrine rejects, in very general terms, the legitimacy of "humanitarian intervention" even in its restricted sense, viz. armed intervention in order to safeguard a State's own citizens in another State.

The obvious arguments which may be employed against such practices are as follows: to tolerate "humanitarian intervention" would be tantamount to creating great uncertainty in international relations, would risk damaging the whole security system established on the basis of the Charter of the United Nations and, finally, would involve patent risks of misuse, since human rights violations can provide a pretext for an intervention with different intentions.

⁴ Cf. Article 51 of the Charter. The notion of armed attack has, however, given rise to various interpretations and much debate; see in particular on this subject: Cassese, Antonio, "Commentaire de l'article 51" in: *La Charte des Nations Unies. Commentaire article par article*, under the direction of Jean-Pierre Cot and Alain Pellet, Economica/Bruylant, Paris/Brussels, 1985, pp. 772 ff.

⁵ This concept and its history have been recalled in, *inter alia*, No. 33 of the *Annales de droit international médical*, 1986, Commission médico-juridique, Monaco.

And yet... in the event of an obvious deficiency in the system established to serve the purposes of the United Nations, do States have no right to take action when acts are committed which are clearly contrary to these purposes? Can it be affirmed that States have a duty to watch people being massacred without using all the means, even military, at their disposal to prevent such a massacre?

This question could obviously give rise to a lengthy debate, which we cannot address properly in the space of a few lines.

It should be noted, however, that in its Draft Code of Crimes against the Peace and Security of Mankind,⁶ the United Nations Commission on International Law mentions both "any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations" (Article 2, paragraph 1) and "Inhuman acts, such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities" (Article 2, paragraph 11).

Since unilateral State intervention is allowed solely for protecting national independence if offences such as those defined in Article 2, paragraph 11 are committed, no other option is envisaged than to implement the international system based on the Charter. For reasons mentioned above no provision has been made, should this system prove deficient, for a temporary derogation in favour of general humanitarian interests. There would therefore be no option other than that of committing one offence against the peace and security of mankind in order to prevent another.

Admittedly, the priority objective remains the strengthening of the system based on the Charter. But would not the existence of a "state of necessity", based no longer on defence of the national interest alone but on that of fundamental humanitarian interests, warrant a fresh debate in the light of certain contemporary events?⁷

⁶ The text of which may be found in, *inter alia*: *The Work of the International Law Commission*, Fourth edition, United Nations, New York, 1988, pp. 141-143.

⁷ Even though the arguments against such a derogation generally appear to prevail, as may be seen in particular in the resolution adopted on this subject by the Institute of International Law at its session in Santiago de Compostela, September 13, 1989 (Resolution No. 5).

2. States' "*devoir d'ingérence*"

In the "global village" which the world has now become, States can be thought to have not only a right to open their eyes but also a duty to do so. The Charter of the United Nations does in fact lay down certain principles governing action by the Organization "and its Members" in pursuit of the United Nations' objectives.⁸ Moreover, the influx of aliens in a number of countries is compelling States to examine the situation in the countries where these persons come from since their *refoulement* or their admission as refugees depends on that situation.⁹

Finally, by introducing the obligation for all States party to the Geneva Conventions to "ensure respect for" these Conventions, international humanitarian law establishes at least an obligation to remain vigilant.¹⁰

In short, it can be concluded from the ever-increasing interdependence of all States, the development of human rights and the emergence of a principle of solidarity that States today are no longer allowed a "right of indifference".

On the other hand, it would clearly be excessive to infer from this that there consequently exists a duty to intervene by force outside of security systems as defined by the Charter of the United Nations. Analysis of the obligation to "ensure respect for" international humanitarian law, which is contained in particular in the Geneva Conventions, leaves no doubt whatsoever about this point.¹¹

3. Attitude of the ICRC and of the International Red Cross and Red Crescent Movement with regard to "*ingérence*" by one State in another

1. This question arises for the International Committee of the Red Cross first and foremost within the framework of its mandate, as

⁸ Cf. Art. 2 of the Charter.

⁹ Cf. in particular Art. 33 of the Convention relating to the Status of Refugees of 28 July 1951.

¹⁰ Cf. Article 1 common to all four Geneva Conventions, and Article 1 of their Additional Protocol I of 1977.

¹¹ Cf. in particular Condorelli, Luigi and Boisson de Chazournes, Laurence, "Quelques remarques à propos de l'obligation des Etats de respecter et faire respecter le droit international humanitaire 'en toutes circonstances'" in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, C. Swinarski, ed., ICRC/Martinus Nijhoff Publishers, Geneva, 1984, pp. 17-36.

acknowledged by the Movement's Statutes, "to work for the faithful application of international humanitarian law applicable in armed conflicts".¹²

To this end, the ICRC must determine whether international humanitarian law is applicable, and therefore whether there is an armed conflict. Hence "*l'ingérence*" is concerned here only if it takes the form of armed intervention. When this is the case, there is unquestionably a situation in which the Geneva Conventions are applicable and, if the States concerned are both parties thereto, Additional Protocol I as well.

It should be stressed that even on the basis of United Nations' resolutions, the use of armed force to get relief supplies through cannot be justified by international humanitarian law since, as noted above, the obligation to "ensure respect for" this law rules out the use of force. The question, therefore, is not one of implementing international humanitarian law but of using force to terminate serious and mass breaches of this law. It is true that, as in the human rights field, this is not entirely ruled out by the Charter system in that such breaches may be regarded as a threat to international peace and security. The important thing for the ICRC is that this question should be clearly regarded as coming under *jus ad bellum*. It is not simply a matter of relief actions such as those provided for in Article 23 of the Fourth Geneva Convention or in Article 70 of its Additional Protocol I. The ICRC must therefore take cognizance of this act which comes under *jus ad bellum* and draw all necessary conclusions in terms of international humanitarian law (*jus in bello*).

The above-debated question of the legitimacy or lawfulness of *l'ingérence* accordingly does not concern the ICRC more than any other question of *jus ad bellum*. The ICRC must even be extremely reticent about addressing such questions, as any pronouncement with regard to the parties' responsibility for the outbreak of conflict would obviously be detrimental to the active role it is required to play in the conflict in aid of all the conflict victims.¹³

In this respect it is expedient to recall an essential basis of international humanitarian law: the reason for armed intervention has no effect on the obligations resulting from the said law. This is true of any armed intervention, including those which are undertaken within the framework of a Security Council recommendation.

¹² Article 5, paragraph 2 c) of the Statutes of the International Red Cross and Red Crescent Movement.

¹³ A role also provided for in the Movement's Statutes: cf. in particular Article 5, paragraph 2 d).

The theoretical possibility of relying on Article 103 of the Charter¹⁴ to tolerate a derogation from treaties as universally recognized as the Geneva Conventions would warrant in-depth consideration at least. But it can be affirmed already that a decision of this nature would, in any event, have to be based at least on a conscious, reasoned decision on the part of those responsible for taking it.

The armed forces acting under the United Nations' flag or by virtue of Security Council resolutions would not have any interest — nor would any State claiming to interfere in the affairs of another State for humanitarian reasons — in using the juridical basis or the lofty humanitarian motivation of their mission to exempt themselves from applying certain provisions of international humanitarian law: firstly, they would deprive their intervention of all credibility by refusing to accept this “island of humanity” which even the worst aggressor is bound to accept; secondly, they would give the opposing combatants a pretext not to respect humanitarian law either, to the detriment of the wounded and prisoners of war of their own armed forces.

2. A second question arises not only for the ICRC but also for National Red Cross and Red Crescent Societies, with regard to armed action for humanitarian purposes: may these and other humanitarian organizations cooperate with armed forces in this context? This is evidently a topical question in view of what happened in the Kurdish populated areas in Iraq at the end of the Gulf war and, even more recently, in what was Yugoslavia. For the ICRC the reply is in the negative for reasons that are obvious and connected with the foregoing. Irrespective of the justification for such action, it may well entail armed confrontation, and thus casualties and prisoners. If associated with or covered by one of the armed forces in the conflict, the ICRC would lose all credibility in its role as a neutral intermediary, and thus any chance of being able to perform this role. At a theoretical level, National Red Cross and Red Crescent Societies might be able to cooperate with the medical services of their country's armed forces or even, subject to their country's consent, with the medical services of a third country.¹⁵ But such cooperation could, firstly, be envisaged only for tasks reserved for medical personnel, as specified in the Geneva

¹⁴ Article 103 of the Charter states that “*In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail*”. Concerning the interpretation and application of this article, cf. Flory, Thiébaud, “*Commentaire de l'art. 103*”, *La Charte des Nations Unies: Commentaire article par article*, op. cit. (in note 4), pp. 1381-1386.

¹⁵ Cf. Art. 26 and 27 of the First Geneva Convention of 12 August 1949.

Conventions,¹⁶ and secondly, it would have to take place under the responsibility of the medical services of the armed forces.¹⁷ A National Society may not display the red cross or red crescent emblem when acting as a government proxy to convey food relief in a situation of armed conflict.

This restriction imposed by the Conventions on the tasks of a National Society is mainly connected with the use of the red cross or red crescent emblems. Since the latter are first and foremost emblems identifying the armed forces' medical services with a view to affording them protection, it is only right that their use should be strictly delimited.¹⁸

But this restriction also derives from the Movement's Statutes, which are designed, again rightly, to create some order in the large International Red Cross family. To this end, the said Statutes stipulate that international assistance in situations of armed conflict or internal strife shall be coordinated by the ICRC.¹⁹

Finally, what is the situation with regard to cooperation by humanitarian organizations not connected with the International Red Cross in such action? Several reasons justifying the refusal to cooperate by the components of the Red Cross and Red Crescent Movement, reasons connected with the ICRC's mandate, the red cross and red crescent emblem and the internal organization of the Movement, do not apply to intergovernmental organizations. Hence the importance for the ICRC of dissociating itself from the United Nations coordination system, even though it must maintain close consultation with the latter.²⁰ However, if such organizations do have to cooperate in armed interventions for humanitarian purposes undertaken on the basis of Security Council resolutions, they are then acting as humanitarian auxiliaries of armed forces and not within the context of "relief actions which are humanitarian and impartial in character and conducted without any adverse distinction".²¹ Moreover, the United Nations specialized agencies or subsidiary bodies would obviously not be able

¹⁶ Cf. Art. 24 of the First Convention.

¹⁷ Cf. Art. 26 and 27 of the First Convention.

¹⁸ Cf. Art. 44 of the First Convention.

¹⁹ Cf. Art. 5, para. 4 b) of the Statutes of the International Red Cross and Red Crescent Movement.

²⁰ Cf. on this subject particularly de Courten, Jean and Maurice, Frédéric, "ICRC activities for refugees and displaced civilians", *IRRC*, No. 280, January-February 1991, pp. 9-21.

²¹ According to the wording used in Article 70 of Additional Protocol I.

to cooperate under any circumstances in action outside the scope of the system laid down by the Charter.

As for non-governmental organizations, such cooperation on their part depends on the rules laid down in their statutes, but it is clear, in the light of what has been said above, that it could be envisaged only at the expense of their independence.

3. The more fundamental question that arises with regard to armed action having the limited objective of enabling the passage of relief is that of the advisability of such operations within the current international system, which is based on the Charter of the United Nations.

In other words, between failure of humanitarian action as provided for by international humanitarian law (which is based on respect for the red cross or red crescent emblem and on acceptance by all the combatants of relief operations which are humanitarian and impartial in character) and armed intervention designed to gain temporary military control of the situation, is there a third option consisting of imposing relief by military means?

Or, to put it more concisely, between the specifically political and the specifically humanitarian approach, can a combined political and humanitarian approach be found?

No definitive reply can be given here to this serious question. But the failures or great difficulties encountered in pursuing this middle course, as well as the obvious danger inherent in the politicization of humanitarian action, raise a number of crucial questions for the international community.

At this stage our sole objective is to make this clear.

Apart from the debate on advisability, the ICRC, as we have seen above, has no option but to consider that any armed intervention, regardless of its reasons, entails application of international humanitarian law. The ICRC cannot therefore be associated with armed action for humanitarian purposes, but must analyse the new situation created by such action in order to envisage, together with all the parties involved, the role it is required to play to ensure respect for international humanitarian law and to cooperate actively in the implementation thereof.

4. “Droit” or “devoir d’ingérence” of humanitarian organizations

This question is completely different from the previous one in that it is based on an inescapable fact: humanitarian organizations do not have armed force or other means of coercion at their disposal.

In reality, the questions raised in public debate have essentially been as follows:

- do humanitarian organizations have an absolute duty to comply with the will of the governments of the States on whose territory they wish to operate?
- Are humanitarian organizations obliged to use the only “weapon” at their disposal, that of public denunciation, when they ascertain serious breaches of international humanitarian law or even of human rights or international law in general?

It is rather regrettable that for image and promotional reasons, a new far-reaching discussion was ostensibly launched on the principles of the matter, whereas in reality it was merely a discussion of advisability.

Standpoints have in fact been attributed to the International Red Cross and Red Crescent Movement in general and to the ICRC in particular which were not theirs. Respect for the will of governments is certainly not one of the Movement’s *objectives*. On the contrary, the history of international humanitarian law documents a progressive “erosion” of the preserve of national sovereignty in favour of humanitarian action. Particularly noteworthy in this respect are the insertion, in the Geneva Conventions of 1949, of an Article 3 common to all four Conventions which enables an impartial humanitarian body such as the ICRC to offer its services to *each of the parties* to a non-international armed conflict; the principle of relief actions for civilians lacking essential supplies, not only in occupied territory, but also on the territory of a party to the conflict, laid down in Article 70 of Additional Protocol I of 1977; or the recognition, in Article 16, paragraph 1 of Additional Protocol I, that “Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom”.

As for the Movement’s work, it is prompted solely by the first of its fundamental principles, the principle of humanity, which enjoins it to endeavour to “prevent and alleviate human suffering wherever it may be found”. Negotiating with a government or with dissident authorities is not an objective but a necessary means of attempting to achieve as effectively as possible, in time of armed conflict, the objective set by the principle of humanity. To boast that one has reached victims without the consent of the military authorities controlling a territory implies deliberately forgetting that 95 per cent or more of humanitarian needs can be met only with the consent of such authorities. Thus without wishing to express an opinion on the advisability of

such an approach, we must note that it is consequently improper to present it as the envisageable option of two alternatives, the other option being negotiations with the military authorities. Let us therefore acknowledge that this point has given rise to an “unproductive polemic”, which is in the process — at least so we hope — of being resolved.

The obligation to go public has also been the subject of an unproductive polemic. From the ICRC’s greatly misrepresented attitude in the extreme situation prevailing during the Second World War²² it has been concluded that a kind of rule of allegiance to governments or even of passive complicity requires the institution to be discreet about what it does. Now silence has never been set up as a principle by the ICRC. The question has always been considered from the angle of efficiency in achieving the objective set by the principle of humanity.

It cannot, of course, be denied that some decisions are difficult, since the benefit of going public must be assessed in terms of what is best for the victims, taking into account not only the very short-term risks but also the possible longer-term effect on the operation concerned and, finally, the overall consistency of the approach compared with other breaches. Furthermore, remaining silent is particularly debatable when humanitarian action reveals situations that are very serious in humanitarian terms and are unknown to governments and the public.²³

This is true even though the problem of going public today has more to do with the need to shake the international community out of its indifference to situations that are tragic from a humanitarian viewpoint than with the need to reveal unknown violations.

We should accept therefore that the continuing necessity of a genuine debate on the advisability of certain approaches to what may have been called the humanitarian organizations’ right or duty to intervene should take precedence over alleged differences of principle.

The dialogue between humanitarian organizations — whether governmental or non-governmental — involved in armed conflicts is necessary since a better knowledge of the tasks, priorities, methods and experience of each one can but improve the overall efficiency of

²² Cf. in particular on this subject Favez, Jean-Claude, *Une mission impossible? Le CICR, les déportations et les camps de concentration nazis*, Editions Payot, Lausanne, 1988.

²³ Although we do not wish to re-open here a debate on the attitude of the ICRC towards the extermination of civilians, particularly Jews, during the Second World War, it should be noted that the ICRC, contrary to popular belief or frequent claims, did not possess any important information about this tragedy which was not also known to the Allied governments.

humanitarian action. However, to be positive and constructive, such a debate must avoid public disparagement for reasons that are sometimes not without ambiguity.

5. Right to assistance

Today this more appropriate term appears to be gaining ground over the expressions "*droit d'ingérence*" or "*devoir d'ingérence*". However, the "right to assistance" is not clearly defined either. In reality, the latter term opens up a range of important and complex issues. The message we would like to put over in this connection is concerned primarily with the already existing basis for this debate. The 600 or so articles of the Geneva Conventions of 1949 and of their Additional Protocols of 1977, not to mention the other Conventions forming part of international humanitarian law, in fact simply give legal expression to a broad interpretation of the right to assistance. These texts are the result of more than one hundred years' often painful experience, of a slow process of growing public awareness and of laborious negotiations with governments. In this article we shall not embark on an analysis of these provisions, the value of which is competently pointed out by Professor Maurice Torrelli and Ms. Denise Plattner in this issue of the *Review*.²⁴ Nor do we intend to claim that they are the "last word" in the field of international humanitarian law. On the contrary, it is essential that this body of law should benefit from the new experience gained during each armed conflict and should take weapons developments and new humanitarian problems into account. To this effect the ICRC's intention was to submit numerous documents examining the implementation or development of international humanitarian law to governments at the 26th International Conference of the Red Cross and Red Crescent, which was scheduled to be held at the end of 1991 in Budapest but unfortunately had to be postponed.²⁵

²⁴ See below Torrelli, Maurice, "From humanitarian assistance to "intervention on humanitarian grounds?", pp. 228-248, and Plattner, Denise, "Assistance to the civilian population: the development and present state of international humanitarian law", pp. 249-263.

²⁵ See in particular the following reports: "Respect for International Humanitarian Law — National Measures to implement the Geneva Conventions and their Additional Protocols in Peacetime (C.I/4.1/1); Implementation of International Humanitarian Law — Protection of the Civilian Population against Famine in Situations of Armed Conflict" (C.I/4.2/2); "Implementation of International Humanitarian Law — Protection of the Civilian Population and Persons *hors de combat*" (C.I/4.2/1); "Reaffirmation and

On the other hand, care must be taken at all costs to avoid initiating debates on such a vast subject while “forgetting” this sound basis, at the risk of calling into question the remarkable humanitarian achievements it represents.

Final remarks

The present issue of the *Review* seeks above all to show where the humanitarian organizations’ dialogue with governments, the public and among themselves stands at present, and the future course it could take. By focusing attention on the true problems may it serve, in a constructive spirit, to give renewed impetus to this dialogue.

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Development of International Humanitarian Law — Protection of Victims of Non-international Armed Conflicts from the Effects of Hostilities” (C.I/6.1/1); “Reaffirmation and Development of International Humanitarian Law — Information concerning Work on International Humanitarian Law Applicable to War at Sea” (C.I/6.2/1); “Reaffirmation and Development of International Humanitarian Law — Prohibitions or Restrictions on the Use of Certain Weapons and Methods in Armed Conflicts — Promotion of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons of 10 October 1980, together with its Three Protocols” (C.I/6.3.1/1); “Reaffirmation and Development of International Humanitarian Law — Prohibitions or Restrictions on the Use of Certain Weapons and Methods in Armed Conflicts — Developments in relation to certain Conventional Weapons and New Weapons Technologies” (C.I/6.3/2/1). Mention should also be made of the report “Respect for International Humanitarian Law: ICRC Review of Five Years of Activity (1987-1991)” which was to have been presented by the ICRC President and has been reproduced in *IRRC*, No. 286, January-February 1992, pp. 74-93.

From humanitarian assistance to “*intervention on humanitarian grounds*” ?*

by Maurice Torrelli

Affirmation of the “*devoir d’ingérence*”

While States ever more ardently defend their sovereignty, which does little to improve international cooperation, and as the application of humanitarian law in armed conflicts declines, men of good will throughout the world are doing their utmost to reverse these trends. The century now drawing to a close has witnessed a plethora of private initiatives taken in an effort to temper reasons of State by more humane considerations. Many non-governmental organizations, some symbolically styling themselves “without borders”, have taken over where governments can no longer cope, organizing relief, combating drought, preserving the environment or improving sanitary conditions. These voluntary organizations whose vocation is to serve mankind are without question pursuing humanitarian aims as defined in the first Red Cross principle, which is “to prevent and alleviate human suffering wherever it may be found”, and whose “purpose is to protect life and health and to ensure respect for the human being”. Emergency medical assistance organizations, stating that they wish to remain independent of the powers that be, demanding freedom of action to help all victims and encouraged by the example set by Henry Dunant and the ICRC, do not hesitate to claim that their activities fall within the terms of an as yet unwritten body of law entitling them to bring assistance to needy civilian communities, even against the will of the government. Indeed, they believe that receiving proper care is one of the basic human rights of the individual, wheresoever and whosoever he may be. Such basic rights know no national boundary. While

* United Nations translate the French “*droit d’ingérence humanitaire*” by “right to intervene on humanitarian grounds”. See also note 1, page 215.

awaiting recognition of their activities, the duty to intervene is created by moral considerations.

In 1987, the publication of the proceedings of an international conference organized by Dean Mario Bettati and Dr. Bernard Kouchner with a deliberately provocative title — “The duty to intervene” — was well received by the French authorities. Already, in 1981, in Mexico, the President of the Republic had referred to the offence of failing to assist a people in danger and regretted that that offence had no legal existence. On 5 October 1987, he stated: “As suffering can be experienced by any individual, it is universal. The right of victims to be succoured when they call for help, and to be succoured by volunteers who see themselves as professionally neutral in fulfilling what has come to be known as ‘the duty of humanitarian intervention’ in situations of extreme emergency, will certainly be included one day in the Universal Declaration of Human Rights. For no State can be considered sole proprietor of the suffering it causes or harbours”.

This approach, supported by the Foreign Minister, Mr. Roland Dumas, was to send French diplomats at the United Nations into action. France “believes that the law of humanity takes precedence over the law of nations and should always serve as a basis for the latter; and that the duty to provide humanitarian assistance, ever more an integral part of today’s universal conscience, should be embodied in international legislation in the form of a ‘right to intervene on humanitarian grounds’”.¹ Humanitarian issues have become a central theme of French activity within the UN. It was on the initiative of France that, on 8 December 1988, the General Assembly adopted resolution 43/131 entitled “Humanitarian assistance to victims of natural disasters and similar emergency situations”. On 14 December 1990, resolution 45/100 proposed consideration of relief corridors to facilitate access to victims. That spate of activity was to gain particular prominence when, on 5 April 1991, the Security Council stepped in with resolution 688 to provide protection for Kurds in Iraq, this being a measure “without historical precedent as it provided for and permitted a right of intervention in the internal affairs of a State”.² The Security Council followed this up on 23 January 1992 with resolution 733 on the situation in Somalia.

¹ Roland Dumas, “La France et le droit d’ingérence humanitaire”, *Relations internationales et stratégiques*, No. 3, 1991, p. 57.

² *Ibid.*, p. 60.

Ignorance of the right to humanitarian assistance

Assistance, interference, intervention — the confusion is total, for interference or intervention in the internal affairs of a State, even for humanitarian reasons, is still condemned in theory by international law. What is new here is a surprising ignorance of legal realities. The discussion has taken a political turn, while the right to humanitarian assistance during periods of armed conflict has been recognized since 1949 by the Geneva Conventions, to which 170 States are now party.³ When not accused of acting as an accessory to murder by its silence,⁴ the ICRC is depicted as “an association like any other, whereas in fact it has a specific role, precisely relating to the right to assistance”.⁵ To raise the discussion above political considerations, the first thing to do is to recall that a right to assistance already exists, before wondering what might happen if a right of intervention were recognized.

I. ASSISTANCE — A RIGHT RECOGNIZED IN THE NAME OF HUMANITY

The variety of terms used in humanitarian law, such as “relief”, “relief operation” or “assistance operation”, should not obscure the fact that humanitarian assistance, all specific definition apart, is basically the provision from without of health services, food or equipment to help victims of a conflict, whether international or internal. There are many provisions which acknowledge this principle and its terms and conditions, which may vary with the situation. This article is no place for an analysis of the details, which have been studied on several occasions in the *International Review of the Red Cross*.⁶ Here it will

³ Mario Bettati: “This principle, while not appearing in the 1949 Geneva Conventions, is not conceptually alien to them”. “Un droit d’ingérence?”, *RGDIP* 1991, p. 645.

⁴ In this connection, Bernard Kouchner in Biafra went so far as to bear witness “against the Red Cross — with the support of Sartre — because it closed its eyes to the food embargo used as a means of warfare. I did not wish to repeat the error of the last war when the Red Cross kept silent about the extermination camps”. *Le monde aujourd’hui*, 9-10 March 1986, p. XII.

⁵ Jean-Christophe Rufin, “La maladie infantile du droit d’ingérence”, *Le Débat*, Gallimard, No. 67, November-December 1991, p. 25.

⁶ See especially Jean-Luc Blondel, “Assistance to protected persons”; Boško Jakovljević, “The right to humanitarian assistance”; Michael A. Meyer, “Humanitarian action: a delicate balancing act”; Peter Macalister-Smith, “Non-governmental

suffice to recall the general lines. The right to offer assistance is broadly recognized but the exercise of that right is subject to permission from the State. Indeed, the right to humanitarian assistance has to be reconciled with the preservation of sovereignty.

A. A general right of initiative

The ICRC — and any other impartial humanitarian body in international or non-international armed conflicts — enjoys an acknowledged right of initiative, that is to say, the right to propose its services. Hence, according to Articles 9, 9, 9 and 10 respectively of the four Geneva Conventions, “the provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief”. Article 3 common to all four Conventions further states that “an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict”. Even though the ICRC does enjoy a privileged position⁷ and appears as a model for all other bodies that might wish to offer their services, it does not have a monopoly in this respect.

These general provisions apart, there are other articles that recognize the right of initiative, but they often specify by whom it may be exercised. For example, Article 27 of the First Convention refers to “a recognized Society of a neutral country”, and Article 64 of Protocol I concerns “civilian defence organizations of neutral or other States not Parties to the conflict and international co-ordinating organizations”. In

organizations and coordination of humanitarian assistance”, *IRRC*, No. 260, September-October 1987. Frédéric Maurice and Jean de Courten, “ICRC activities for refugees and displaced civilians”, *IRRC*, No. 280, January-February 1991. Peter Macalister-Smith, “Protection of the civilian population and the prohibition of starvation as a method of warfare”, *IRRC*, No. 284, September-October 1991.

⁷ For example, Article 81, para. 1, of Protocol I reads “The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian functions ...”; paras. 2 and 3 state that the parties shall grant the “facilities necessary” to Red Cross organizations or “facilitate in every possible way” assistance by other Red Cross organizations; under para. 4, “the High Contracting Parties and the Parties to the conflict shall, as far as possible, make facilities similar to those mentioned in paragraphs 2 and 3 available to the other humanitarian organizations”.

other cases, the texts merely envisage the possibility or necessity of external aid, without going into details. This is the case, for example, with Articles 23, 59-62 and 108-111 of the Fourth Convention, as supplemented by Article 69 of Protocol I, with respect to meeting the needs of the population of an occupied territory. Article 70, para. 1, of Protocol I also states: "If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions". In such cases, the offer of external assistance may be made by public or private bodies, States, international organizations, the ICRC, National Red Cross or Red Crescent Societies and NGOs.

As this right of initiative has been legally accepted by States, it cannot be denounced as undue interference when exercised. By recognizing this right, States have simply expressed their sovereignty. Indeed, this view is supported by many provisions, such as Article 27 of the First Convention, Article 64 of Protocol I and Article 70 of the same Protocol. In its decision concerning *military and paramilitary activities in and against Nicaragua*, the International Court of Justice confirmed that assistance limited to the underlying purposes of the Red Cross and given without discrimination was not to be condemned as an intervention in the internal affairs of a State. The resolution adopted on 13 September 1989 by the Institute of International Law at its session in Santiago de Compostela stresses in Article 5 that "an offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross, of food or medical supplies to another State in whose territory the life or health of the population is seriously threatened cannot be considered an unlawful intervention in the internal affairs of that State".⁸

B. The obstacle of consent

Consent — the expression of sovereignty — is hence a basic principle in the exercise of the right to humanitarian assistance in armed conflicts.

⁸ *Yearbook of the Institute of International Law*, Vol. 63-III, 1990, pp. 338-345.

(a) Limited powers

However, this is no arbitrary power. The expression of this consent is subject to the principle of good faith. It is conditioned by respect for the rights that the State has conferred on its nationals, the victims of the conflict, by virtue of Articles 7, 7, 7 and 8 respectively of the four Conventions and the provisions of Article 18, para. 2, of Protocol II. Under Articles 54 of Protocol I and 14 of Protocol II, starvation is prohibited as a method of warfare. Consent also depends on the nature of and the circumstances attending the humanitarian assistance. A case in point is Article 23 of the Fourth Convention, which requires all States party to the Convention to allow the free passage of all medical and hospital stores, objects necessary for religious worship and essentials for children, expectant mothers and maternity cases. Similarly, Article 59 of the same Convention, referring to the situation of an occupied territory, requires the occupying power to accept relief supplies if the population is inadequately supplied. The provisions of Article 59 are compulsory. Article 70, para. 2, of Protocol I provides that "the parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party". Finally, in non-international armed conflicts, the State no longer has the exclusive power of consent.

(b) Shared powers

Article 3 common to the four Conventions constituted a veritable legal revolution because it meant that each State agreed, in the humiliating situation in which its authority was flouted, that its relations with the sector of the population rebelling against it would thenceforth be governed by international humanitarian law. The exact scope of that provision with respect to assistance is all too often unknown. This is particularly unfortunate since in such a situation, the most frequent form of armed conflict since 1949, it is the rebels who are in greatest need of assistance, especially medical.

It should be remembered that, according to common Article 3, "an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict". Here there are two possibilities. First, an impartial humanitarian body may want to take action on the part of the territory under the control of the legal government, in which case the government must give its

consent. Otherwise, the humanitarian body may want to work on the part of the territory controlled by the rebels, in which case the agreement of the latter will suffice, without it being necessary also to obtain the agreement of the legal government; provided, of course, that it is possible to reach the rebel territory without passing through government-controlled areas. As Mr. Yves Sandoz⁹ wrote, the system envisaged by Article 3 “in practical terms authorizes the ICRC (or any other impartial humanitarian body) to enter a territory without the agreement of the government that still represents the entire State internationally”. Undoubtedly, implementing this provision would be a problem if a government were to refuse to admit to a state of armed conflict, yet the ICRC “could not forswear its action in a large area of the territory of a State over which the government has lost control simply because that government denied the obvious”.

But is that legal situation not called into question by Article 18 of Protocol II, according to which the State has a monopoly of consent? As the Protocol is only additional to the main treaty — the 1949 Conventions — the provisions of the latter take precedence according to the Vienna Convention on the Law of Treaties, and especially as the purpose of the Protocols is to improve the lot of victims and not to cast any doubt on the Conventions. The ICRC did not hesitate to state that this drastic wording must be rejected and to express the hope that it would in no case give rise to restrictive interpretations that would limit activities intended to help innocent victims. At its 10th session, the Medico-Legal Commission of Monaco unanimously adopted a resolution stating that “in non-international armed conflicts, under Article 3 common to the four Geneva Conventions, a non-governmental medical organization is entitled to perform its activities in territory controlled by any governmental or non-governmental party provided that it has obtained the prior consent of the party concerned.”¹⁰

(c) Conditional agreement

In fact, the State is entitled to make its consent conditional on certain requirements.

⁹ “The right of initiative of the International Committee of the Red Cross”, *German Yearbook of International Law*, Vol. 22, 1979, p. 365.

¹⁰ See Maurice Torrelli, “La protection du médecin volontaire”, *Annales de droit international médical*, No. 33, 1986, Palais de Monaco, resolution III, p. 79.

Generally speaking, relief work has to be humanitarian, impartial and non-discriminatory. Its purpose is exclusively to help victims; relief supplies are to be distributed according to need, giving priority to the most urgent cases of distress. Relief work must also be performed in compliance with the country's internal laws and without hindering military operations.

That means that the State has a supervisory power, the extent of which may vary from one situation to another. This applies not only to the State on whose territory the action is being undertaken but also to the State which gives right of passage. Such supervision may be exercised by a neutral State, by the ICRC or by some other humanitarian and impartial body (Art. 61 of the Fourth Convention, by a Protecting Power, Art. 70, para. 3b, of Protocol I, Art. 23 of the Fourth Convention, etc).

In general, it may be said that the condition that the distribution of relief be supervised, whether imposed by law or demanded by the party authorizing the aid, definitely "seems clearly linked to the obligation to accept such activities and could be considered as a corollary thereof."¹¹

Despite the recognition of this right to assistance, sovereignty still all too often takes precedence over humanity. The State may always be tempted to refuse to acknowledge the existence of an armed conflict, or the urgent need for outside aid, and it may claim interference. However, it cannot evade its responsibilities *vis-à-vis* the community of States party to the Geneva Conventions. Here again, humanitarian law is a precursor to new trends in international law. Long before the notion of an international community came into being, Article 1 common to the Geneva Conventions had already created its basis in law by requiring that States undertake "to ensure respect for" the Conventions "in all circumstances", not merely by bringing diplomatic pressure to bear on governments in conflict situations which had failed to fulfil their commitments, but also by economic or other measures permitted by international law and not involving the use of armed force, which would be in breach of the United Nations

¹¹ 26th International Conference of the Red Cross and Red Crescent, *Implementation of international humanitarian law: Protection of the civilian population and persons hors de combat*, ICRC document C.1/4.2/1, Geneva, 1991, p. 9.

Charter.¹² So, to avoid feeling threatened by the prospect of humanitarian intervention, all States have to do is meet their commitments.

II. INTERFERENCE — A DUTY CONTESTED IN THE NAME OF SOVEREIGNTY

“The duty not to interfere stops where the risk of failure to assist begins”, said the President of the French Republic on 30 May 1989 on opening the CSCE meeting on human rights. So intervention is justified in the name of humanity. That means that NGOs, in particular,¹³ but also third-party States, should be able to intervene if an emergency situation and the basic needs of a given community so require, even against the will of the State. Even if States cannot accept this principle, can they not try to improve the conditions of humanitarian assistance?

A. “*Ingérence*” in the name of humanity

We are currently witnessing considerable legislative activity in the sphere of human rights and this, in turn, is having its effect on humanitarian law. The “*droit d’ingérence*” should be based on affirmation of the right to life that transcends national borders. In its resolution 43/131, the UN General Assembly acknowledged that “the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to human life and an offence to human dignity”. In its resolutions 688 and 733, the Security Council drew its own inferences from this recognition of the humanitarian dimension by the UN.

¹² This interpretation is confirmed by the 1989 resolution of the Institute of International Law, as quoted. It should also be remembered that Article 89 of Protocol I provides that in the event of serious violations of humanitarian law, States undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with its Charter.

¹³ Resolution 43/131 stresses the importance of their role: “Aware that alongside the action of Governments and intergovernmental organizations, the speed and efficiency of this assistance often depends on the help and aid of local and non-governmental organizations working with strictly humanitarian motives”.

(a) The legislative activity of the General Assembly

At the heart of the tension between humanity and sovereignty, human rights tend to appear in the following guises.

1. The basis of a new humanitarian order

The resolution adopted by the Institute of International Law at Santiago de Compostela declares that “human rights, having been given international protection, are no longer matters essentially within the domestic jurisdiction of States” and that the “international” obligation to respect human rights is *erga omnes*, conferring on all States a “legal interest” in observing them. In Article 5, it points out that an offer of relief supplies does not constitute interference and goes on to state: “However, such offers of assistance shall not, particularly by virtue of the means used to implement them, take a form suggestive of a threat of armed intervention or any other measure of intimidation; assistance shall be granted and distributed without discrimination. States in whose territories these emergency situations exist should not arbitrarily reject such offers of humanitarian assistance”.

Thus, States no longer refer to General Assembly resolution 36/103 of 9 December 1981 on “the inadmissibility of intervention and interference in the internal affairs of States”, which stresses “the duty of a State to refrain from the exploitation and the deformation of human rights issues as a means of interference in the internal affairs of States, of exerting pressure on other States or creating distrust and disorder within and among States or groups of States”. Interference, and intervention even more, when they take the form of armed coercion, are always condemned under international law. The prohibition in resolution 2625 of 24 October 1970 was not deemed sufficient to reassure States in an area as sensitive as that of non-international armed conflicts. Hence, Article 3 of Protocol II reaffirms the principles of the inviolability of national sovereignty and non-intervention in matters falling essentially within the purview of a State, for any reason whatsoever; this is mainly because certain private organizations had allegedly committed abuses under cover of humanitarian activities. The prohibition is general and “is therefore addressed not only to States, but also to other bodies, international or non-governmental organizations, which might use the Protocol as a pretext for

interfering in the affairs of the State in whose territory the armed conflict is taking place".¹⁴

2. *The principle of subsidiarity*

The merit of the General Assembly resolutions lies in the fact that they stress the importance of the assistance that the NGOs can provide along with States or international organizations in emergency situations. These resolutions, like those of the Institute of International Law, considerably broaden the field of application as this right may be exercised not only in times of armed conflict,¹⁵ internal disturbances and tensions, but also in the event of natural disaster or to cope with the consequences of a massive violation of human rights. However, this broadening of application does entail a risk: a State which is unwilling to accept this approach might tend to reject the entire package, including humanitarian law, in a situation of armed conflict.

Hence the basic objective being sought is to ensure free access to the victims of emergencies. This brings us up against the problem of consent and an attempt has to be made to persuade States to accept this principle. But the outcome is a legally confused situation. State consent is always required. Resolution 43/131 "reaffirms also the sovereignty of affected States and their primary role in the initiation, organization, co-ordination and implementation of humanitarian assistance within their respective territories". But, should the State refuse, then the principle of subsidiarity comes into play. "It is only as 'second best' that international assistance is resorted to, as a substitute for activities that should have been undertaken by the State with jurisdiction over the territory in question".¹⁶ The fact that victims are abandoned "without humanitarian assistance constitutes a threat to human life and an offence to human dignity" (eighth preambular paragraph of the resolution). Emergencies call for rapid action and the document expresses the desire "that the international community should respond

¹⁴ *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, eds.) ICRC, Martinus Nijhoff Publishers, Geneva, 1987 — Protocol II, Article 3, para. 4503. It is thus difficult to agree with Mario Bettati that the principle of non-intervention "refers only to States and intergovernmental organizations" (*op. cit.*, RGDIP 1991, p. 651).

¹⁵ These resolutions, while not referring to situations of armed conflict, concern "humanitarian assistance to victims of natural disasters and similar emergency situations", which seems implicitly to include man-made disaster situations, in other words, armed conflicts.

¹⁶ Mario Bettati, *Trimestre du Monde*, 1992, p. 3.

speedily and effectively to appeals for emergency humanitarian assistance made in particular through the Secretary-General” of the United Nations (fifth paragraph of the preamble). The United Nations then states that it is convinced that “rapid relief will avoid a tragic increase” in the number of victims (ditto, tenth para.). From this stems the principle of free access to victims, and this precisely is the “revolutionary” part of the text.¹⁷ Still, it is true that resolution 43/131 goes no further than to state the principle that the “prime” role is that of the State on the territory of which the disaster occurred. From this it may be deduced that the “secondary” role, that of the humanitarian organizations, is automatically performed if the “prime” role is not fulfilled. This interpretation may be inferred from the overall logic of resolution 43/131 which, in its entirety, is based on the interests of the victims. Subsequent practice confirms this interpretation.¹⁸

The idea underlying the reasoning of Dean Bettati when he submitted and defended those resolutions was drawn directly from Article 17 of the Montego Bay Convention which, with respect to the right of inoffensive passage through territorial waters, allows for stopping and dropping anchor “in cases of unavoidable circumstances or in order to assist persons, ships or aircraft in danger or distress”. The idea is attractive but it has yet to be set down in a legal text. The logical interpretation of resolution 43/131, the details of which are set forth in resolution 45/100, must remain in the sphere of *lege ferenda* until such time as legal opinion has been confirmed by practice.

3. Principles of conduct — the true significance of neutrality

While the ICRC appears as the epitome of impartial humanitarian organizations, we have to begin by remembering that it has to abide by the principles of the Movement. Those principles have an undoubted internal value since, according to the Preamble to the Statutes of the International Red Cross and Red Crescent Movement, the Movement is guided in its mission by its Fundamental Principles. All States party to the Conventions have accepted those principles by adopting the Statutes.

The International Court of Justice, in its decision in the *Nicaragua* case, subsequently confirmed the scope thereof by making the principles of humanity and impartiality proclaimed by the Red Cross the essential conditions for all humanitarian action. That being so, it is

¹⁷ *Ibid.*

¹⁸ Mario Bettati, *op. cit.*, *RGDIP* 1991, p. 656.

most regrettable that it did not deem it advisable to include the principle of neutrality which is, to say the least, as important as that of impartiality. It is true that neutrality may be misunderstood, but it is nevertheless the prime condition for humanitarian action.

"Life is not neutral, commit yourself!" That exhortation from everyday life can only sharpen the frustration of those who, in their humanitarian work, have to respect the principle of neutrality. "This principle may be incongruous in the context of modern humanitarianism, which tends to make greater calls on commitment. It also stands out from all the other fundamental principles of the Red Cross, all of which are active, positive principles. Taken alone, neutrality is a negative principle embodying the concept of abstention. For some, it is synonymous with indifference, for others, it is no longer relevant in a world that encourages the individual to participate actively through personal commitment. Brought down to the level of armed conflict or internal disturbance, misunderstood neutrality is grist for the mill of its detractors who, after the fashion of Loysel, proclaimed something like 'he who can prevent yet does nothing is guilty'".¹⁹

That is the problem that NGOs have to grapple with when they claim both to provide relief and to denounce violations of human rights.²⁰ "Neutrality is certainly an essential condition for humanitarian action. But it is no longer possible, as it was in the past, to defend over-conservative principles which can have dire consequences in certain circumstances. The second generation of humanitarian action, that of the 'French doctors' and the many medical and health-care NGOs which came into being at the end of the 60s, has refused the paralysing effects of neutrality and its passive consequences. It is no longer possible, other than at the cost of major distortion, for neutrality to serve as the justification for inaction, abstentionism and wait-and-see attitudes in humanitarian matters".²¹

¹⁹ Jacques Meurant, "Principes fondamentaux de la Croix Rouge et humanitarisme moderne", in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, ICRC, Martinus Nijhoff Publishers, 1984, p. 893.

²⁰ This would apply specifically to the volunteer doctor who had taken the oath as modified by *Médecins du Monde*: "As a doctor, faithful to the laws of honour and probity set forth in the Hippocratic Oath, I undertake, to the best of my ability, to care for those in the world who are suffering in body or mind. I refuse to accept that science or medical knowledge include oppression or torture, that human dignity be impaired or horror concealed. I undertake to bear witness. I make these promises, solemnly, freely and upon my honour."

²¹ Mario Bettati, "Assistance humanitaire et droit international", in *Les droits de l'homme et la nouvelle architecture de l'Europe*, a publication of the Institute of Peace and Development Law, Nice, 1991, p. 169.

Yet neutrality is the very basis of humanitarian law, the element that prevents the taking of sides over the cause of the conflict. Although it is the reason for the discretion exercised by the ICRC, it in no way means that the institution is indifferent to the fate of the victims. It is well known that when the ICRC is faced by flagrant violations of humanitarian law and there is no hope of remedying the situation, it will make a public appeal to all the States party to the Conventions. But this can be done only in extreme cases, for it does not suffice to carry out humanitarian missions to become acceptable to States. They are always quick in denouncing interference in their internal affairs, especially in situations of armed conflict. So trust has to be earned and maintained. It is not enough to declare one's neutrality: that neutrality has to be proved through one's behaviour. That being so, the ICRC has to obtain the agreement of the two parties to an internal conflict even though impartiality requires that it treat both camps "equally", or even that it give priority to the rebels if their need is greater. It knows that in such cases its neutrality is likely to be contested by the State and that the immediate consequence might be that it will be prevented from pursuing its mission.

Hence it is fortunate that the condition of neutrality reappears in resolution 43/131, which recalls that "the principles of humanity, neutrality and impartiality must be given utmost consideration by all those involved in providing humanitarian assistance". All parties might at some time have to provide humanitarian assistance, not just the ICRC but also the public services of a State and, of course, NGOs. Respect for that principle is all the more necessary when action taken by the Security Council politicizes the discussion even further.

(b) Security Council action

The unanimity of the five permanent members, made possible by a favourable world situation, at last permitted the Security Council to fulfil its role as a sort of international board of directors. Another innovation was the fact that resolution 688 (1991) made humanitarian concerns part of United Nations law. This "trend for humanitarian considerations to spread beyond the confines of armed conflicts"²² will inevitably raise many problems.

²² Pierre-Marie Dupuy, "Après la guerre du Golfe", *RGDIP*, Vol. 95/1991/3, p. 269.

1. Confirmation of the right of interference in internal affairs

Resolution 688/1991 “demands that Iraq ... immediately end this repression” and that “Iraq cooperate with the Secretary-General to these ends”. Recalling Article 2(7) of the Charter, the Council “condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region”. Indeed, one tends at times to forget that Article 2(7), which confirms the areas reserved for domestic jurisdiction, cannot prejudice the application of enforcement measures under Chapter VII” when the Council feels that peace is threatened.

Under the legal system established by the Charter, the appreciation of situations and the decisions that the Security Council may have to take are beyond reproach even though they may be open to criticism in political terms. As Dean René-Jean Dupuy writes in this respect, “interference is in no way new. It is perfectly legal”.²³ Still, is it a good thing to place *jus ad bellum* and *jus in bello* on the same footing or even to merge them?

2. Humanity à la carte

In reality Security Council action remains a random matter. It can at any moment be paralysed by the veto, and depends on whether the members of the Council deem it appropriate. Such a selective approach cannot help but be discriminatory.²⁴ Obviously action cannot be taken against just any State; it will depend on the power that State wields. It may therefore be claimed that “humanitarian law has so far been a universal law; while the right of intervention is a law of inequality”.²⁵

3. The humanitarian diplomacy of States

These measures taken by the Security Council show the ambiguity that can result when humanitarian work is taken over from private bodies by States. In parallel with the assistance being provided by the United Nations, the United States, acting on the basis of resolu-

²³ *Trimestre du Monde*, 1992, p. 12.

²⁴ Discrimination between peoples: on 25 April 1991 the Algerian Foreign Minister asked for humanitarian intervention on behalf of the Palestinian people; also discrimination between Iraqi Shiites and Kurds.

²⁵ Jean-Christophe Rufin, *op. cit.*, p. 27.

tion 688 and with the authorization of the Security Council, responded to pressure applied by Turkey, France and Britain by launching operation "Provide Comfort", which although armed is fundamentally humanitarian in nature. It is true that military means may be used for humanitarian purposes when, for example, a State needs to evacuate its nationals. In Yugoslavia, the presence of a French minister and a warship (*La Rance*) might have induced the Yugoslav government to make certain concessions. Humanitarian ships had previously gone to Lebanon on a similar mission. However, as necessary as the presence of a warship may be, its significance is always ambivalent. "States have realized the benefits they could derive from charitable and emergency diplomacy. It costs little, it has maximum media impact and rallies a consensus, which makes it an ideal activity for governments at a loss for a political solution. The Kurdish relief operation was above all an opportunity to legitimize State intervention for humanitarian purposes. I for one doubt the wisdom of this. When armies go into action — whatever that action may be — I fear that there are reasons behind that action which are anything but humanitarian".²⁶ According to Rony Brauman, President of *Médecins sans frontières*, it is essential to resist the temptation on the part of States to implement humanitarian activities themselves. This should be left entirely up to NGOs; otherwise such activities will become just another tool in the diplomatic bag.

4. Has "the right to intervene on humanitarian grounds" become sanctioned by custom?

The Security Council seems to confirm the right of access to victims but it does so with some hesitation. It no longer demands; it "insists that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations" (resolution 688/1991, para. 3). That access has to be authorized by the Iraqi government in respect for the sovereignty and political independence of Iraq, as stated in the Preamble.

Although the resolution does call on States, the relevant United Nations agencies and humanitarian organizations to contribute to humanitarian relief efforts, it is nonetheless up to the UN Secretary-General to ensure that the assistance operation is carried out. It was he who, on 18 April 1991, concluded an agreement with the Iraqi

²⁶ Jean-Christophe Rufin, *op. cit.*, p. 29.

Government. So it appeared that even in such exceptional circumstances the need for consent was confirmed.

One might well wonder whether Security Council operations in Iraq and Somalia can be considered as having set a precedent. The French Foreign Minister seems to think not. After having stated that the Security Council expresses the law,²⁷ he goes on to write: "The implementation of this relief operation in a situation of extreme humanitarian emergency made it necessary, under resolution 688, to overstep the strict limits of international law with respect to intervention. This was really a *de facto* exercise of the right of intervention in the internal affairs of a State. Forty-five years after the French initiative in San Francisco, this is definite progress. But resolution 688 was adopted for a specific case by a single body, the Security Council, which does not lay down general principles but issues injunctions and launches operations. This makes it different from resolutions adopted by the General Assembly, for they do indeed establish general principles and standards of ethical and political behaviour".²⁸

Dean Bettati shares this uncertainty. "As international humanitarian action is pragmatic in approach, it remains subject to diplomatic improvisation. Still, we are encouraged by the increasing frequency with which such operations are accepted and welcomed. International law has not yet codified any binding rules in this respect. Are the embryonic elements of a custom taking shape? It all seems to have the right smell, taste and colour, as a certain advertisement puts it, but is it really custom?".²⁹ In this context, certain improvements are called for.

B. Improvements in assistance methods

Although the right to humanitarian assistance has long existed in humanitarian law, there is certainly room for improvement in means of implementation to facilitate access to victims, protect relief workers and coordinate their efforts.

(a) Access to victims

Quite apart from any question as to whether the urgency of a situation justifies waiving consent, General Assembly resolutions have the

²⁷ *Le Monde*, 12 March 1991.

²⁸ Roland Dumas, *op cit.*, p. 62.

²⁹ Mario Bettati, *op. cit.* (note 21 above), pp. 183-184.

great merit of stressing the need for speed in providing relief. Resolution 43/131 invites States in need of assistance to facilitate access to victims. In paragraph 6, it “urges States in proximity to areas of natural disaster and similar emergency situations, particularly in the case of regions that are difficult to reach, to participate closely with the affected countries in international efforts with a view to facilitating, to the extent possible, the transit of humanitarian assistance”.³⁰ Resolution 45/100 calls on States to consider the possibility of establishing “relief corridors” for humanitarian aid, limited in time and space, in accordance with the terms set forth. This initiative needs encouraging for it could help solve many practical difficulties encountered by relief operations.

(b) Protection of relief workers

Although this is no longer the main point at issue, it is one of the major demands made by the medical NGOs that submitted a “charter for the protection of medical missions” to the Council of Europe on 29 February 1984. Here again, humanitarian law offers undoubted guarantees.

For example, Article 71, para. 2, of Protocol I states that personnel participating in relief operations “shall be respected and protected”. Similarly, NGOs carrying out medical work³¹ may enjoy the general protection conferred by Article 16 of Protocol I and Article 10 of Protocol II to the effect that “under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom”. They may even enjoy the protection of the emblem provided that they respect the conditions attaching. Of course, the conditions of that protection need to be more closely defined. At its 10th session, the Medico-Legal Commission of Monaco also stressed “the importance of establishing a procedure whereby:

1. the identity of members of a relief mission can be established;

³⁰ This was intended to remind States that, according to the terms of Article 70, para. 5, of Protocol I, “the Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international co-ordination of the relief actions ...”.

³¹ Despite, or because of, the imprecision of the text, it may be considered that some of them could fall into the category of “impartial international humanitarian organizations” mentioned in Protocol I, Article 9, para. 2(c).

2. the professional competence of medical and paramedical personnel can be checked;
3. the mission can be prepared as part of an overall evaluation of the health conditions....

It further:

insists that any use made of the protective emblem must comply strictly with the provisions to that effect contained in the Geneva Conventions and Additional Protocols;

draws the attention of non-governmental medical organizations in particular to the fact that any misuse of the emblem undermines the protection afforded to those making legitimate use of it;

reaffirms that under no circumstances can a medical act performed in accordance with medical ethics give grounds for penal proceedings or punishment;

requests that, if captured, staff of non-governmental medical organizations be repatriated without delay".³²

But, once again, any improvement in protection has to be sought on the legal basis of the Geneva Conventions and the Protocols additional thereto.

(c) Coordination of operations

Everyone agrees that relief operations need to be better coordinated. This would make it possible to evaluate the needs arising from the emergency situation, in order to avoid duplication of effort and improve the efficiency of all concerned. It should also facilitate supervision of the distribution of relief supplies to ensure that they are not diverted to other purposes. Indeed, in this respect it is difficult to contest shared responsibility between the humanitarian body and the authorities of the beneficiary country:

- as far as the victims are concerned, the humanitarian body must ensure that the supplies reach those for whom they are intended;
- as far as the authorities are concerned, the humanitarian body has to provide guarantees that there has been no illicit trafficking;
- as far as the donors are concerned, the humanitarian body must, by its presence and by its activities on which it has to report, guarantee that the supplies are used for no purpose other than that for which they are intended.

³² *Annales de droit international médical*, No. 33, 1986, resolution III, p. 79.

In this respect, the creation by the General Assembly on 19 December 1991 of a post of Coordinator for Humanitarian Emergency Operations was certainly a step forward, even though it was greeted with distrust by the non-aligned States.

The ICRC could hardly oppose any improvement in the coordination of relief operations under United Nations auspices. The fact that it enjoys observer status will certainly facilitate its longstanding practical cooperation with the UN, provided, however, that its special character is not overlooked in any ambiguous and hence uncertain legislation, or in situations in which it works alongside others (States or NGOs) whose activities in the field are not in keeping with the principles of conduct applicable in humanitarian assistance operations.

On this subject, Paul Grossrieder wrote: "In its own specific field, the ICRC conducts operations that presuppose total neutrality and impartiality. When these operations overlap with other initiatives of a political or military nature, the ICRC's role as a neutral intermediary is blurred and then discredited, because any attempt to reconcile humanitarian and military interests is like trying to square the circle.... Since the ICRC needs to be totally independent and neutral in order to act as a neutral intermediary between parties to a conflict, it would be inconsistent for its work to be coordinated by an intergovernmental body."³³ One could also wonder, as did the Medico-Legal Commission of Monaco at its 11th session in May 1991, whether it might not be necessary to "define conditions for the application of the notion of '*intervention on humanitarian grounds*', while taking care not to confuse situations of armed conflict and those of natural disaster".

Finally, it is up to the President of the ICRC to prevent humanitarian aid assuming political overtones. "I do believe, however, that for its own good and that of the Movement as a whole, the ICRC must preserve the unique nature of its specific mandate, that is, its impartial, independent and neutral role under the Geneva Conventions".³⁴

The right to humanitarian assistance as defined by humanitarian law can admittedly not give full satisfaction because of the obvious limitations that still beset it. That is why so many attempts have been made to improve it in practice or to broaden its field of application.³⁵

³³ ICRC Bulletin, No. 191, December 1991, p. 1.

³⁴ Interview with Cornelio Sommaruga, ICRC Bulletin, No. 192, January 1992, p. 2.

³⁵ See Peter Macalister-Smith, "Protection of the civilian population and the prohibition of starvation as a method of warfare — Draft texts on international humanitarian assistance", *IRRC*, No. 284, September-October 1991, pp. 440-459; Michael A. Meyer, "Humanitarian action: a delicate balancing act", *IRRC*, No. 260, September-October 1987, pp. 485-500.

It is to be hoped that until such time as a new general Convention comes along, offering States a chance to reconsider the existing rules, efforts will be made at least to look into the ethics referred to in resolution 45/100 or to draw up a code of conduct reminding both States and NGOs of the principles to be respected. Meanwhile, it should not be forgotten that humanitarian law, "including its provisions on relief action, has proved successful over the years because it reflects a largely acceptable balance between humanitarian interests and the realities of combat or occupation, which [seems] the best that can be agreed".³⁶ It should further be stressed that respect for the right to humanitarian assistance cannot be dissociated from compliance with the entire body of humanitarian law, which forms its basis.

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³⁶ Meyer, *op. cit.*, p. 500.

Assistance to the civilian population: the development and present state of international humanitarian law

by Denise Plattner*

1. Introduction

Bearing in mind the plethora of rules applicable in time of war, jurists define international law rather elaborately as follows:

*“International humanitarian law applicable in armed conflict means international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict”.*¹

International humanitarian law is contained mainly in six international treaties - the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. The Geneva Conventions are binding on nearly all States (169 States are party to them). Protocol I regulates international armed conflicts, with 110 States party, and

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¹ *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, eds., International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva, 1987, p. xxvii.

Protocol II regulates non-international armed conflicts, with 100 States party.²

International humanitarian law is often styled "*jus in bello*" as opposed to "*jus ad bellum*" or "*jus contra bellum*" (the rules of international law that prohibit the use of armed force). There is thus a sharp divide between "*jus contra bellum*" and "*jus in bello*"; this distinction preserves humanitarian law from any influence by "*jus contra bellum*". In other words, humanitarian law has to be observed by all belligerents — both by the aggressor and by the victim of aggression; similarly, humanitarian law is applicable whatever the cause or the grounds for the war.

Contrary to widespread belief, the prohibition of war has tended to encourage the development of humanitarian law - the four Geneva Conventions were adopted just four years after the Charter of the United Nations. It seems therefore that progress in humanitarian law and progress in "*jus contra bellum*" go together.

With regard to international humanitarian law, the International Committee of the Red Cross (ICRC), as distinct from the National Red Cross and Red Crescent Societies and their Federation, fulfils various functions. States request the ICRC to prepare developments in international humanitarian law; this it did as soon as it was founded by proposing that they adopt the original Geneva Convention, that of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field.³ The ICRC also has to ensure, in particular by visiting prisoners of war and monitoring conditions in occupied territory,⁴ that humanitarian rules are being observed. Lastly, it has a right of initiative whereby, with the agreement of the authorities concerned, it takes any action it considers necessary to

² As at 15 May 1992.

³ See on this subject Article 5, paragraph 2(g), of the Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross in Geneva in October 1986. The text of these Statutes was published in the *International Review of the Red Cross*, No. 256, Jan.-Feb. 1987, p. 25 ff.

⁴ See Article 126 of the Third Geneva Convention and Article 143 of the Fourth Geneva Convention, which relate to supervision of the provisions made for the protection of prisoners of war and of civilian persons respectively. Article 5, paragraph 2(c), of the Statutes of the International Red Cross and Red Crescent Movement defines in general terms the various duties involved in supervising the application of international humanitarian law, when it states that "the role of the International Committee is to work for the faithful application of international humanitarian law applicable in armed conflicts" (see Note 3 above).

further the interests of victims of armed conflict and the aims of humanitarian law.⁵

2. Protection of the civilian population until 1949

Humanitarian law recognizes that the civilian population of a belligerent State is entitled to receive assistance. Accordingly it takes into account the almost inevitable effects of war on standards of living, and the fact that the consequent suffering serves no purpose because the sufferers take no direct part in hostilities. It may be as well to remind the reader at this point that humanitarian law is founded on the principle codified in 1868 by the Declaration of St. Petersburg, which states that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy”.⁶ As will be seen later, both in theory and in practice assistance to the civilian population is only one of the ways of protecting it from the rigours of armed conflict. This means that development of the rules governing assistance is linked to development of the humanitarian law protecting the civilian population.

Before 1949 there were no humanitarian rules relating specifically to the civilian population as such. The Regulations annexed to Hague Convention IV envisaged only some of the acts that could be committed by an army of occupation.⁷ Unlike the provisions made as early as 1899 for prisoners of war, the annexed Regulations of 1907 did not mention aid to civilians. Curiously enough, the governments of that time were so sure that it was impossible to intern nationals of a belligerent State who were resident in the territory of

⁵ The ICRC's right of initiative is recognized, as regards international armed conflicts, in Article 9 of the First, Second and Third Geneva Conventions, and in the second sentence of Article 81, paragraph 1, of Additional Protocol I; and as regards non-international armed conflicts in the second paragraph of Article 3 common to the four Geneva Conventions. Article 5, paragraph 2(d), of the Statutes of the International Red Cross and Red Crescent Movement sanctions it as regards internal armed conflicts and strife (see Note 3 above).

⁶ Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime. This text appears in *The Laws of Armed Conflict, A Collection of Conventions, Resolutions and Other Documents*, Dietrich Schindler and Jiri Toman, eds., Martinus Nijhoff Publishers, Dordrecht, Henry Dunant Institute, Geneva, 1988, pp. 285-288.

⁷ See Articles 42-56 of the Regulations annexed to Hague Convention IV, 1899 and 1907 versions, Schindler/Toman, *op. cit.*, pp. 75-93.

the adverse party that they refused to include any such prohibition in those Regulations.⁸

The First World War gave the lie to such optimistic beliefs, and in 1921 the ICRC began to put forward preliminary drafts to deal with the humanitarian problems thrown up by the war. The most important of these proposals forbade deportations and the execution of hostages in occupied territory, and guaranteed civilians the right to correspond and receive relief.⁹

In 1929, however, governments would not commit themselves except in regard to members of the armed forces, and only the Convention on prisoners of war was adopted. In 1934 the International Conference of the Red Cross in Tokyo adopted another draft for submission to a Diplomatic Conference planned for 1940,¹⁰ but it came too late, for the Second World War broke out in 1939. Had that draft been adopted, the legal and political context of the fate of the Jews and the civilian populations of Nazi-occupied territory would have been different, but there is no certainty that it could have prevented the barbarous cruelties that took place.

By the end of the Second World War nobody questioned the need for an instrument designed especially for the protection of civilians in time of war. The protection of wounded, sick and shipwrecked members of armed forces, and of prisoners of war, had been much improved by the adoption of the First, Second and Third Geneva Conventions of 1949, and the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war was a great advance on previous regulations. No wonder, then, that the first rules pertaining to assistance for civilians appeared in 1949.

It has however been said that already at the time of the First World War the ICRC had seen the need for new rules to protect civilians, for its Commentary on the Fourth Geneva Convention remarks that the first signs of total war, exposing civilians and soldiers to the same dangers and extending beyond the front line, had already appeared in the 1914-1918 war.¹¹

⁸ *Commentary on the Fourth Geneva Convention relative to the protection of civilian persons in time of war*, published under the general editorship of Jean S. Pictet, ICRC, Geneva, 1958, p. 3.

⁹ *Ibid.*, p. 4.

¹⁰ *Ibid.*, p. 4.

¹¹ *Ibid.*, p. 3.

3. Regulations governing assistance in time of blockade and enemy occupation

The principal provisions of the Fourth Geneva Convention relative to the protection of civilian persons stem from the ICRC's work to bring assistance to distressed civilian populations from 1939 onwards and all the attendant difficulties.

Three economic factors dominated the Second World War. The first was destruction on an unprecedented scale by mechanized units, artillery and aircraft, devastating rural areas and towns alike and destroying equipment, livestock and means of transport. The second was the requisitioning of labour, raw materials and food by the Axis powers. The third was the blockade whereby each coalition of warring powers attempted to isolate its adversary and cut it off from its sources of supply; neutral trade too was subject to quotas and kept under supervision. These three factors together caused production to plummet all over Europe. The situation was particularly disastrous in countries like Belgium and Greece, which even in peacetime had to import much of their food. Deficiency diseases appeared and soon led to a sharp rise in mortality.¹²

Relying solely on its own Statutes — the Fourth Geneva Convention did not yet exist — the ICRC carried out relief operations under the aegis of the Joint Relief Commission set up by itself and the League of Red Cross Societies (now the International Federation of Red Cross and Red Crescent Societies) for assistance to civilian populations.¹³ It also acted independently, as, for example, in Greece. The following figures will give some idea of the scale of these operations:

— the Joint Commission bought, transported and distributed 165,000 tonnes of relief supplies, worth 314 million Swiss francs, to 16 European countries including Belgium, France, the Netherlands, Yugoslavia and Poland, and later, in the immediate post-war period, to defeated Germany, Austria, Italy and Hungary;¹⁴

¹² See François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, Thesis (in press), p. 263.

¹³ *Report of the International Committee of the Red Cross on its activities during the Second World War (September 1, 1939-June 30, 1947)*. Vol. III, Relief activities, Geneva, 1948, p. 363 ff.

¹⁴ *Report of the Joint Relief Commission of the International Red Cross*,

— to supply Greece, Swedish vessels made 94 voyages between Canada (or Argentina) and Greece, delivering 17,000 tonnes of food monthly from September 1942 to March 1944, and even more thereafter.¹⁵

These relief operations necessarily required the agreement of the principal belligerents. The ICRC had therefore to conduct two separate sets of negotiations, respectively with Germany and with the Allies. On 11 January 1941, the Ministry of Foreign Affairs of the German Reich agreed in principle to relief operations for the benefit of the civilian population of the occupied territories, on the following conditions: consignments were to be collective, not individual; the German Red Cross was to organize and supervise the distribution of gifts, but they were to be distributed by local charitable organizations; representatives of donors might be allowed to visit occupied territories to see that aid was being properly distributed; and for its part Germany undertook that no part of the relief would be diverted to German troops or civilian administrators.¹⁶

The British government's reaction of 14 September 1940 was much less favourable to relief operations. It argued that it was the duty of the Occupying Power to provide food for occupied territory; that relief consignments might enable the Occupying Power to increase its requisitions of locally-produced foodstuffs; that occupied territory would not have been at risk from famine had the invader not seized all available reserves; and lastly that humanitarian considerations should not stand in the way of a blockade, because only rigorous blockade would bring hostilities to a speedy close. It did, however, make an exception for consignments of medicines for the sole use of the sick and wounded,¹⁷ and in practice a few other exceptions to the blockade were negotiated, for example for the operation in Greece.

1941-1946, Geneva, ICRC and League of Red Cross Societies, 1948, p. 441. See also Bugnion, *op. cit.*, p. 267.

¹⁵ *Ravitaillement de la Grèce pendant l'occupation 1941-1944 et pendant les premiers cinq mois après la libération. Rapport final de la Commission de Gestion pour les secours en Grèce sous les auspices du Comité international de la Croix-Rouge*, ICRC, Athens, 1949, pp. 17-19 and pp. 168-171. See also Bugnion, *op. cit.*, p. 271.

¹⁶ *Report of the Joint Relief Commission*, *op. cit.*, pp. 436-437. See also Bugnion, *op. cit.*, p. 265.

¹⁷ *Report of the Joint Relief Commission*, *op. cit.*, p. 13. See also Bugnion, *op. cit.*, p. 265.

The British government's last argument would, at any rate nowadays, be considered absolutely incompatible with international humanitarian law; it is in fact an attempt to justify total war, which is exactly what international humanitarian law seeks to prevent.

The contrast between the British and German attitudes is particularly striking. It may be asked whether the German response was made for humanitarian reasons, and whether it would have been the same had the British government's reply welcomed relief operations. Perhaps, as the British feared, Germany agreed to relief operations in the hope of using them for its own benefit. No answer can be given to all these questions, but the precedent is instructive for several reasons.

First, the German reply shows that a relief operation should not be regarded as contrary to a belligerent's military interests. Secondly, a totalitarian State waging a war of aggression welcomed the ICRC's proposal, whereas a country regarded as one of the oldest democracies in the world refused it — for reasons one of which would now be regarded as unacceptable, to say the least. Admittedly Britain was a victim of aggression, and this tends to show that a country that goes to war for a just cause, or for a cause it believes to be just, will not necessarily behave in a humanitarian way. It would be wrong to jump to conclusions; but neither is it safe to assume that a country that respects human rights will always or in all circumstances respect humanitarian law.

The ICRC's negotiations on this matter led in particular to two highly important provisions of the Fourth Geneva Convention. Its Article 23, drafted with blockade in view, makes mandatory the free passage of certain goods necessary to the survival of the civilian population. The British government's reservations have not been overlooked, for an exception may be made to the obligation to allow the free passage of relief supplies where they would confer a definite advantage on the enemy. Now that the economic weapon has become particularly effective because States are dependent on each other in commercial relations, this provision is still of the greatest importance.

The duty of the Occupying Power to ensure that the population of occupied territory is properly supplied and the limits to its powers of requisition are set out in Article 55 of the Fourth Geneva Convention. If in spite of this the population of an occupied territory is still inadequately supplied, the Occupying Power is obliged by Article 59 of the Fourth Geneva Conventions to agree to relief schemes, in which supervision of distribution of supplies is compulsory.

4. Regulations governing assistance to the civilian population on national territory

The obligations imposed by Articles 23 and 55 ff. of the Fourth Geneva Convention apply only to the relations existing, by reason of war, between one State and another, as in Article 23, or between a State and a population other than its own, as in the provisions regulating relief operations on occupied territory.

The obligations of a State concerning assistance to its own nationals were elaborated at the Diplomatic Conference of 1974-1977, which adopted the two Protocols additional to the Geneva Conventions. Their appearance in the form of written rules coincided with a new approach to the humanitarian problems raised by armed conflicts.

The Diplomatic Conference of 1949 confined itself to alleviating the plight of a civilian population "in enemy hands" and therefore liable to suffer from arbitrary action by a foreign belligerent State. With few exceptions,¹⁸ the Fourth Geneva Convention does not deal with protection of the population from hostilities, that is, from military operations, although in the Second World War the civilian population probably suffered about as much from indiscriminate bombing as from abuses of power by the occupying forces. As stated above, during the 1914-1918 war the ICRC realized the danger to victims of armed conflict represented by more powerful weapons and military aircraft. In all probability the situation immediately after the Second World War hardly lent itself to consideration of such matters, for the conduct of military operations in that war could reflect unfavourably on the Allies as well as on Nazi Germany.

In 1956, only ten years after the Second World War, the ICRC drew up a set of "Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in time of War", which was not adopted by governments.¹⁹ Another attempt was made in 1965 at the 20th International Conference of the Red Cross, and this time a resolution was adopted.²⁰ Some years later, in 1968, the United Nations,

¹⁸ See especially Part II of the Fourth Geneva Convention.

¹⁹ *Commentary on the Additional Protocols, op. cit.*, p. 587, paragraphs 1831 and 1832.

²⁰ Resolution XXVIII, on the protection of civilian populations against the dangers of indiscriminate warfare, published in the *International Review of the Red Cross*, No. 56, November 1965, pp. 588-590. This resolution also appears in Schindler/Toman, *op. cit.*, pp. 259-260.

which had hitherto been reluctant to consider matters relating to armed conflict, adopted a resolution of similar content.²¹ Some of the many resolutions on respect for the civilian population in time of war which subsequently emanated from the United Nations²² or International Conferences of the Red Cross covered the conduct of military operations as well as the provision of supplies.²³

When the Diplomatic Conference opened in 1974, the time was therefore ripe for the drafting of new rules to cover both subjects — the protection of civilian persons from hostilities, and assistance to the civilian population.

For several reasons these two subjects were, in a way, connected with each other. To begin with, it was probably realized throughout the blockade enforced in the Second World War, and in subsequent Third World armed conflicts, that the belligerents were using starvation as a weapon. It should be emphasized that both instruments adopted in 1977 strictly forbid attempts to starve the civilian population as a means of weakening the enemy.²⁴ The precedent of Biafra, although the armed conflict there was a non-international one, was certainly one of the underlying reasons for these provisions, and for those relating to assistance.²⁵ The strategy of total war, which abolishes the fundamental distinction between combatants and civilians, made it urgently necessary to devise rules to counter it and uphold the principle established in 1868 by the Declaration of St. Petersburg. The civilian population thus became an entity to be protected from any belligerent whatsoever, even if that belligerent was its own State. Paragraph 5, Article 54 of Additional Protocol I is revealing in that respect. It reads:

“In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion,

²¹ Resolution 2444 (XXIII) of 19 December 1968, on respect for human rights in armed conflicts. See Schindler/Toman, *op. cit.*, pp. 263-264.

²² See the list of these resolutions in the *Commentary on the Additional Protocols*, *op. cit.*, p. 588, Note 16.

²³ See especially Resolution 2675 (XXV) resuming the basic principles for the protection of civilian populations in armed conflicts, of 9 December 1970, in Schindler/Toman, *op. cit.*, pp. 167-268. See also, on relief actions, Resolution XXVI adopted by the 21st International Conference of the Red Cross, Istanbul, 1969, in *International Review of the Red Cross*, No. 104, November 1969, pp. 632-633.

²⁴ Articles 54 of Protocol I and 14 of Protocol II.

²⁵ On the relief activities undertaken during this conflict, see Thierry Hentsch, *Face au blocus: La Croix-Rouge internationale dans le Nigéria en guerre (1967-1970)*, Graduate Institute of International Studies, Geneva, 1973.

derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity” (our underlining).

While these rules may have been made necessary by events, States were probably more prepared to accept them because of the international development of human rights.

Article 70 of Additional Protocol I, then, obliges a State at war to agree to a relief action which is humanitarian and impartial and conducted without any adverse distinction, and if the civilian population in its territory is insufficiently supplied with goods essential to its survival. The agreement of the State is needed, but this is in no way a matter of discretion and such agreement must be given as soon as the necessary conditions are fulfilled.²⁶ Nevertheless, the wording of Article 70 is less imperative than that of Article 59 of the Fourth Geneva Convention. The fact that the population is “national” and not foreign partly explains this difference.

5. The regulation of assistance in a non-international armed conflict

So far, this paper has confined itself to examining the humanitarian rules applicable in an international armed conflict, that is, a conflict which except for wars of national liberation is between States. However, humanitarian law also contains rules applicable to non-international armed conflicts, which have been by far the more frequent since the end of decolonization.

In 1949, States adopted for the first time a provision applicable to internal armed conflicts. It appears in each of the four Geneva Conventions, and is known as “Article 3 common to the Geneva Conventions”. Just as the Second World War led to codification and development of international humanitarian law in respect of international armed conflicts, the Spanish Civil War prompted the codification and development of international humanitarian law in respect of non-international armed conflicts.²⁷

²⁶ See the *Commentary on the Additional Protocols*, *op. cit.*, p. 819, paragraph 2805.

²⁷ On the legal aspects of the Spanish Civil War see Antonio Cassese, “The Spanish Civil War and Customary Law”, in *Current problems of International Law*,

Although Article 3 common to the Geneva Conventions fell far short of the ICRC drafts²⁸ its adoption was a great step forward for international humanitarian law, for it removes the *a priori* internal situation of a non-international armed conflict from the exclusive jurisdiction of the State concerned. Its injunctions are admittedly so basic that they seem very modest, but if they were duly respected in all internal armed conflicts, the plight of victims would be greatly alleviated.

Humanitarian law confers no legal status under international law on the parties to an internal armed conflict,²⁹ but it does impose the same obligations on each of them. These are basically the duty of treating humanely persons who take no direct part in hostilities or who have ceased to fight, the prohibition of summary executions, and the granting of the judicial guarantees necessary to a fair trial. Lastly, by authorizing the ICRC to offer its services to the parties to the conflict, common Article 3 gives a basis, laid down by the Conventions, for ICRC intervention in non-international armed conflicts.

Considerable though it is, the protection afforded by Article 3 common to the Conventions cannot be compared with that given by the imposing body of rules applicable to international armed conflicts. Understandably, therefore, the work done from the 1970s onwards for the adoption of new humanitarian rules intended these to cover internal as well as international armed conflicts. Accordingly, the ICRC submitted a draft Protocol on non-international armed conflicts³⁰ to the Diplomatic Conference of 1974-1977.

Discussion of this text was arduous and protracted.³¹ New States particularly wanted wars of national liberation to be upgraded to the status of international armed conflicts. This was done by article 1, paragraph 4 of Additional Protocol I. The draft concerning internal

Antonio Cassese, ed., Milan, 1975, pp. 287-317.

²⁸ See the *Commentary on the Fourth Geneva Convention*, *op. cit.*, p. 34.

²⁹ This was the decision of the States that adopted Article 3 common to the Geneva Conventions, since the last paragraph of that article reads: "The application of the preceding provisions shall not affect the legal status of the Parties to the conflict".

³⁰ See the *Draft Additional Protocols to the Geneva Conventions of 12 August 1949*, *Commentary*, ICRC, Geneva, October 1973, p. 130.

³¹ On the historical background to Protocol II, see the *Commentary on the Additional Protocols*, paragraph 4360 ff., pp. 1325 ff. For an analytical account of the discussions, see *The Law of Non-International Armed Conflict, Protocol II to the 1949 Geneva Conventions*, Howard S. Levie, ed., Martinus Nijhoff Publishers, Dordrecht, 1987. For the history of the law see Rosemary Abi-Saab, *Droit humanitaire et conflits internes. Origines et évolution de la réglementation internationale*, Henry Dunant Institute, Geneva, 1986.

armed conflicts met with difficulties similar to those encountered in 1949. The rules finally adopted, which form Additional Protocol II, nevertheless develop the principles contained in Article 3 common to the Geneva Conventions. Above all, they cover various aspects of protection of the civilian population from hostilities.³²

The ICRC draft contained an article on actions for the relief of the civilian population whose wording was identical with that proposed for international conflicts.³³ It was not accepted, but Additional Protocol II does contain a provision on international relief actions, Article 18, paragraph 2, which reads:

"If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned".

This article was strongly criticized because it makes a relief action subject to the agreement of the legal government. Article 18 should be considered as the equivalent of Article 70, Protocol I, in that, when correctly interpreted, it means that such agreement must be given if the necessary conditions are fulfilled,³⁴ and for as long as the relief operation is taking place on the territory controlled by the legal government. However, Protocol II does give the legal government an advantage over the rebel party by requiring the agreement of the legal government but not that of the rebel party, even if the relief operation takes place on territory under the latter's control. The legal government may then be tempted to refuse, since the relief will go to the "enemy", who is, to make matters worse, an "internal" enemy. Any such refusal by the legal government would however be a violation of humanitarian law under Article 18, paragraph 2, of Protocol II, as correctly interpreted; and where its refusal is intended to starve the civilian population as a means of weakening the enemy, that violation is aggravated because it infringes Article 14 of Protocol II.

Professor Bothe has investigated the legal basis of all the relief actions possible in such circumstances, and concludes that a unilateral

³² See Protocol II, Part IV.

³³ See *Draft Additional Protocols*, *op. cit.*, p. 165.

³⁴ See *Commentary on the Additional Protocols*, p. 1479, paragraph 4885.

ICRC relief action would be in accordance with international law.³⁵ The ICRC, however, does its best to win the confidence of all parties to the conflict and to persuade them to observe the basic tenets of humanitarian law. Although the relevant text entitles it only to offer its services, the principle that the ICRC may operate in a country ravaged by internal armed conflict is now generally accepted.

6. The present position as to humanitarian assistance

A party to an armed conflict cannot, however, be obliged to agree unconditionally to a relief action. The Fourth Geneva Convention provides that permission for the free passage of relief consignments may be conditional on their distribution being supervised by the bodies responsible for monitoring the application of humanitarian law, namely the Protecting Power or the ICRC. Relief consignments for the inhabitants of occupied territory must be distributed "with the co-operation and under the supervision of the Protecting Power". That duty may be delegated, by agreement between the Occupying Power and the Protecting Power, "to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body" (Art. 61).

The 1977 texts reaffirmed the obligations laid down in 1949, but in more general wording. Thus, both Article 70 of Protocol I and Article 18 of Protocol II specify that relief actions must be conducted in a humanitarian and impartial fashion and without any adverse distinction.³⁶ Article 70, paragraph 1, of Protocol I states that offers of such relief that conform to these conditions shall not be regarded as interference in the armed conflict or as unfriendly acts. These provisos were repeated in Article 5 of the resolution on the protection of human rights and the principle of non-intervention in the internal affairs of States which was adopted on 13 September

³⁵ Michael Bothe, "Relief Actions: The Position of the Recipient State", in *Assisting the Victims of Armed Conflicts and other Disasters*, Fritz Kalshoven, ed., Martinus Nijhoff Publishers, Dordrecht, 1989, pp. 92-97, at p. 96.

³⁶ See also "The Right to Humanitarian Assistance" in *Implementation of international humanitarian law, protection of the civilian population and persons hors de combat*, International Committee of the Red Cross, Doc. C. 174, 2/1, Geneva, 1991, pp. 6-12; and Resolution 12 adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement, at its meeting of 28-30 November 1991 in Budapest, on humanitarian assistance in situations of armed conflict, in *International Review of the Cross*, No. 286, Jan.-Feb. 1992, pp. 56-57.

1989 by the Institute of International Law.³⁷ The International Court of Justice had already accepted them in its judgment in the case of military and paramilitary activities in and against Nicaragua.³⁸

It is of course extremely difficult to say what are the conditions required by each of these principles separately. Can, for example, discriminatory behaviour be in accordance with the principle of humanity? Such criteria serve primarily to preserve the neutral character of aid to victims of armed conflicts, so that such aid shall not pervert the aims of humanitarian law. Know-how and experience are probably essential, and are important in winning the confidence of the belligerents. The agreement of all the parties concerned is also an indication (not necessarily the only one or an absolute one) that assistance does not interfere with military operations in the armed conflict. Article 71 of Protocol I, which deals with personnel participating in relief actions, clearly shows the inevitably precarious balance struck between humanitarian considerations and military necessity. For example, "Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted", but such personnel "shall take account of the security requirements of the Party in whose territory they are carrying out their duties."

7. Conclusions

The aims of international humanitarian law are too important to admit of ineffective regulations. Its history shows that it was not developed from pre-established concepts, but by full and accurate consideration of the realities of war, on which its texts throw a tragic

³⁷ *Yearbook of the Institute of International Law*, Vol. 63-II, p. 345. Article 5 reads:

"An offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross, of food or medical supplies to another State in whose territory the life or health of the population is seriously threatened cannot be considered an unlawful intervention in the internal affairs of that State. However, such offers of assistance shall not, particularly by virtue of the means used to implement them, take a form suggestive of a threat of armed intervention or any other measure of intimidation; assistance shall be granted and distributed without discrimination.

States in whose territories these emergency situations exist should not arbitrarily reject such offers of humanitarian assistance."

³⁸ ICJ, *Reports of Judgments, Advisory Opinions and Orders*, The Hague, 1986, p. 125, paragraph 243.

light for anyone who takes the trouble to look. Obligations must be imposed on leaders of an armed struggle, whether they are national authorities or combatants in an internal armed struggle. The balance between rights and obligations must be acceptable to the whole of the international community, for unless the constraints of humanitarian law are accepted by all it will not be applied. Only where humanitarian duties apply equally to both sides will law take its due place in war.

Denise Plattner

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Swiss neutrality, ICRC neutrality: are they indissociable?

AN INDEPENDENCE WORTH PROTECTING

As the Swiss people ponder over their European destiny and the future of Switzerland's status of permanent neutrality, some commentators have raised the question whether the ICRC will be able to maintain complete independence — whichever way Switzerland turns — in conducting its humanitarian operations based on the fundamental principles of the Red Cross.

No doubt this question is worthy of consideration, but first the proper distinctions should be clearly drawn between the neutrality of Switzerland and the neutrality of the ICRC, and between the ICRC's independence and the independence of the Confederation.

*At the International Red Cross and Red Crescent Museum on 21 January 1992, ICRC President **Cornelio Sommaruga** addressed these issues of concern not only to Swiss citizens, but also to the international community.*

The Review is pleased to publish the text of this presentation for its readers.

* * *

I am delighted to be with you here today in the International Red Cross and Red Crescent Museum. This gives me the opportunity to meet all the "Friends of the Museum" again and to talk to them about a subject of current concern for the ICRC, for Switzerland and for the international community — but also to pay tribute to all those who have contributed and are contributing to the success of this magnificent institution: the Museum. At the same time, it is a great pleasure for me to give thanks to all those who devote their energies directly or indirectly, day after day, to promoting the Red Cross cause, its

ideals, its history and its activities, through their often voluntary work in this Museum.

Their commitment is particularly praiseworthy because, faced with the sad and persistent topicality of human suffering (whether caused by Nature or by man), this institution illustrates, in the most convincing way, the response of all those who pledge to serve under the banner of "HUMANITARIAN ACTION" and thus give hope for a better future. In addition, the Museum shows the real life of the Red Cross to all those who have the opportunity to come and visit. Max Huber, one of the ICRC's great presidents, described this reality in the following terms: "The essential and decisive principle of the Red Cross is the idea that each and every one of us is responsible for the suffering of his fellows, with all the sacrifices that this principle entails."

So, once again, sincere thanks to all the voluntary workers, officials and friends of the Museum. It is absolutely essential to continue this work together, in spite of the considerable problems involved in the Museum's financial management. The interest shown by the Swiss Confederation, by the Republic and City of Geneva, by the Federation of Red Cross and Red Crescent Societies, and in particular by the ICRC, is so great that the Museum will not be abandoned. Personally, I am also counting on the citizens of Geneva, individually and collectively, and especially on their private donations: for them, this institution should demonstrate that the "Spirit of Geneva" is as alive today as it was 129 years ago, when the ICRC — and thus the Red Cross Movement — was founded.

* * *

The Director of the Museum has asked me to talk about neutrality — the neutrality of Switzerland and the neutrality of the ICRC — and above all to answer the question: are they linked or not? In this context, I would like to focus on the notion of independence, because therein lies the key to the success of the ICRC's humanitarian operations. Thus it is an independence worth protecting.

The question of *whether Swiss neutrality and the ICRC's neutrality are indissociable* is no doubt a legitimate question to ask today, when the institution of which I have the honour to be President is committed as never before in a humanitarian effort along three principal lines. To obtain satisfactory results in these three areas, independence and

neutrality are indispensable. I am thinking not only of the operational activities that bring protection and assistance to victims of armed conflict, internal disturbances and tension, but also of the ICRC's primordial role as custodian of international humanitarian law, ensuring that it is respected, universally applied, developed and disseminated. Thirdly, the ICRC is also responsible for safeguarding the fundamental principles of the Red Cross and hence, for example, for preventing the politicization of the International Red Cross and Red Crescent Movement.

In addition, I think it is vital to take the ICRC's special nature into account. The ICRC's neutrality and its independence from Switzerland are not always adequately perceived. This is particularly important at a moment when the entire Swiss Confederation (the federal and cantonal authorities and public opinion) is considering fundamental issues concerning the country's future external relations. I will *not* try to answer the question "*Quo vadis Helvetia?*", another perfectly legitimate question, which has occupied and preoccupied me in the past, when I was a member of the federal administration, and which continues to interest me as a private citizen. But I am here to talk to you as the President of the International Committee of the Red Cross. In this capacity, I can say at once that Switzerland must be able to decide on its future foreign policy without feeling limited by the ICRC! This includes Switzerland's policy of neutrality and/or its neutral status, a basic issue in working out the ways in which Switzerland and the European Community will be linked in the future.

Not to bother about the ICRC? How is that possible, you will ask! That is exactly what I shall try to show you.

The historical ties between the ICRC and the Confederation helped to create a situation whereby for a long time, it is true, the ICRC's neutrality was identified with Swiss neutrality, especially since the use of the same word suggested that the concepts were also the same. However, it is important to point out right from the start that there are two separate concepts, distinct in their legal basis, in their nature and in their goals.

* * *

Let us first examine the legal basis. Switzerland's neutrality is a status conferred by international law. It derives from the law of neutrality applicable in time of war, defining the position of a State

that stays out of a conflict. Swiss neutrality is part of a legal system that can concern only States, whereas the neutrality of the ICRC, a humanitarian organization, was forged through operational practice and is founded upon the recognition of this practice by the international community. The ICRC's neutrality derives directly from the imperative need for action proclaimed by Henry Dunant as far back as 1863: the evacuation of wounded servicemen and the personnel supervising those evacuations had to be shielded by absolute neutrality for effective help to be given. This notion — the neutrality of the wounded and those who care for them — was firmly rooted in the original Convention of 1864 and was taken up again in the subsequent Geneva Conventions. It gradually came to be accepted as the fundamental principle of Red Cross neutrality, that is, respect for those who bring aid, as long as they take no part in the hostilities.

Secondly, we should note the differences between the neutrality of Switzerland and that of the ICRC, in terms of its basic nature and of the scope of the obligations it entails. The legal system of neutrality requires that a neutral State accept the following obligations: non-participation in hostilities, impartiality towards all the belligerents, and diligence in the observation of these obligations. In return, the belligerents must respect the inviolability of the neutral State's territory.

For Switzerland, the status of permanent neutrality, as recognized by the international community in 1815, includes a whole series of additional obligations, which should ensure that it is able to carry out its duties as a neutral country in time of conflict.

For the ICRC, on the other hand, neutrality is a constant obligation, a general principle guiding its activities, from which it cannot depart even temporarily without compromising its ability to act on behalf of victims. In fact, the fundamental principle of neutrality requires all components of the International Red Cross and Red Crescent Movement — not just the ICRC — to maintain a reserved attitude towards belligerents and towards all controversies without relevance to their humanitarian mission.

The third difference between the neutrality of a State and that of an institution like the ICRC resides in the ultimate goal. Whereas, I think we can agree, Switzerland's neutrality is a means of preserving its sovereignty and thus its independence and the integrity of its territory, the ICRC's neutrality is required behaviour if the institution is to fulfil its humanitarian mission, an essential condition governing its operations on behalf of victims. The goal seems clear to me: the ICRC

must refrain at all costs from taking sides so that the opposing parties it must step between will trust it and grant its delegates access to all the victims. To keep everyone's trust and to be able to work, the ICRC remains silent when raising its voice would simply stir up passions and fuel controversy, without serving the humanitarian cause. It is also for this reason that the ICRC does not set itself up as a board of inquiry in cases where international humanitarian law is violated: to assume such a role would be to risk seeing its neutrality called into question by at least one of the parties concerned!

At this point, I should mention a very specific aspect of the ICRC's neutrality. The Geneva Conventions of 1949 recognize the ICRC as an impartial and effective humanitarian organization which meets the necessary conditions to act as a substitute for the "protecting Power", as provided for in international humanitarian law. Among these conditions is the notion of neutrality. I consider this legal provision fundamental, as it sanctions in international law the ICRC's own, permanent neutrality.

Furthermore, the Geneva Conventions expressly entrust other tasks to the ICRC, for example the protection of prisoners of war, and this gives the institution a functional international personality. This private organization set up under Swiss law can thus conclude international treaties and maintain contacts of a diplomatic nature with States. Over forty headquarters agreements confer upon the ICRC immunities normally reserved for governmental international organizations. Recently, through provisions in the federal law governing the protection of information, Switzerland also granted the ICRC special status comparable with that of an international organization having concluded a headquarters agreement with the Confederation.

None of this is very surprising if we take into account the fact that in 1990 the international community once again recognized the ICRC's specific function as a neutral and independent institution: a memorable resolution, co-sponsored by over 130 States, granted the ICRC observer status at the General Assembly of the United Nations.

The neutrality of the ICRC must therefore be clearly dissociated from the neutrality of Switzerland. This does not mean that we should repudiate the fundamental role played by Switzerland's permanent neutrality at the time the ICRC was founded and in the ICRC's functions for decades, as guardian of the Red Cross principles, as custodian of international humanitarian law and, in particular, as a neutral humanitarian intermediary. The ICRC has its headquarters in Switzerland; it recruits its members among the citizens of the Confederation;

the Swiss Federal Council is the depositary of the Geneva Conventions: all these facts confirm the existence of a special bond between the institution and Switzerland. Obviously, common interests link these two separate entities, and it is not surprising that world public opinion associates the ICRC with Switzerland. However, this does not make the ICRC the humanitarian arm of Swiss foreign policy.

* * *

Since World War II, the ICRC has made an effort to define its position more precisely than previously in relation to the Confederation, and to emphasize its independence from the federal authorities. For its part, the Federal Council understood perfectly that respect for the ICRC's independence constitutes a guarantee that the institution will be accepted internationally, in both moral and operational terms. Today — and I want to state this clearly and unequivocally — the cordial relations between the ICRC and the Swiss authorities no longer admit of any ambiguity: their mutual independence is recognized, not only by both partners, but also by the international community. As concerns bilateral relations between the ICRC and the Swiss Confederation, this *de facto* independence could and should be consolidated *de jure*, especially in view of the dynamic process gradually integrating Switzerland into its European environment.

May I repeat: the ICRC enjoys a freedom of action that no governmental influence can limit. It can be impartial (another fundamental Red Cross principle) only if it remains free of all ties. Its strength resides in precisely this absolute independence, which it must maintain despite all opposition in today's world, where everyone else is speaking of involvement and coordination. The ICRC maintains this independence thanks to its own structure, its mononational composition and the system used to designate its members.

Through the cooptation of Swiss citizens for a period of four years, by secret ballot and a two-thirds majority, the ICRC avoids external pressure of all kinds. Its members do not owe their position to anyone; they freely accept a voluntary and public commitment to serve those who are suffering. They are all of the same nationality, thus precluding any State influence on the Committee's decisions through different national allegiances. Moreover, they are all Swiss, but they all have an international outlook, as they have accepted their posts with full knowledge of what is involved, to carry out the ICRC's

specific mission, that is, to implement humanitarian policies valid for all the countries in the international community.

Finally, this special situation — their single nationality — obliges the members of the ICRC when acting as such to set aside as much as possible their own social and cultural context, to free themselves from local ways of thinking to act as citizens of the world in alleviating human suffering. François Peyrot, in his remarkable short work entitled “Switzerland has not said its last word!”, reminds us that Madame de Staël once said: “I have for all of Switzerland a magnificent loathing. These lofty mountains seem to me to be the gates of a convent cutting us off from the rest of the world. We live in a state of infernal peace. We pine, we die in this void!” It could be that two centuries later some Swiss citizens, like Friedrich Dürrenmatt, have shared and still share the opinion of the lady of the manor in Coppet. They are wrong, and this is clearly not the case for the members and staff of the ICRC who, working from Geneva, are engaged in battle on the universal humanitarian front. Nevertheless, I feel it would be advisable for the ICRC to pursue a policy of openness towards other nationalities, whether in the recruitment of headquarters and field staff, for specific projects carried out by National Societies under the auspices of the ICRC, or in seeking high-level international expertise.

All this is important because the different aspects of humanitarian action — logistic, financial, cultural, political and diplomatic — require intensive interaction with the world around us. It is essential to maintain a continuing dialogue with political authorities. During the Gulf war, for example, it was vital for the ICRC’s activities to keep in close liaison with the various parties concerned: the governments and armed forces of Iraq, Kuwait, the countries of the coalition and other countries in the region, opposition groups, and the United Nations (its Secretary-General, the Security Council and the Sanctions Committee). On the basis of its experiences in and around Iraq since 2 August 1990, as well as in other contexts, the ICRC also decided to support the moves towards “humanitarian coordination” within the United Nations, a process aimed at organizing worldwide response to major humanitarian emergencies.

At the ICRC we are convinced that increased coordination is useful and necessary both within the United Nations system and within the International Red Cross and Red Crescent Movement. There must be an open and constructive dialogue between these two bodies and with non-governmental organizations. While combating the tendency towards bureaucratization inherent in all large agencies, in this context

we must preserve the unique nature of the Red Cross Movement, which acts in accordance with its fundamental principles. In particular, we must see to it that the specific role and independence of the ICRC are respected, so that it may fulfil the mandate conferred upon it by the international community. But I would like to repeat that improved information, communication and operational cooperation among organizations, both governmental and non-governmental, is indispensable for all humanitarian aid projects. We owe it to the victims, who are entitled to be protected and helped rapidly and effectively, and we owe it to the donors, who trust the humanitarian organizations to show solidarity in this respect.

This word, "solidarity", is used more and more often nowadays to designate that combination of ethical values and psychological drives that incite men and women to help the weak, the oppressed, the wounded, and the sick. Through its principles and binding provisions, humanitarian law takes up the defence of the weak against the strong and gives legal force to the "Good Samaritan" reflex and the ethic of human solidarity. It upholds the inalienable rights of people who find themselves in the most vulnerable position: people who are unarmed in situations of conflict. It affirms the right of the wounded to receive care, of prisoners of war to remain alive, of civilians to stay out of the fighting and of first-aid workers to reach the victims. In other words, this law affirms the right of the victim or potential victim of armed conflict to receive protection and assistance.

During the past few months, on the basis of the duty we all have to provide assistance to those in need, some people have tried to establish a "*droit d'ingérence humanitaire*". This slogan sprang from the understandable feeling of frustration that arises when one sees humanitarian aid being obstructed by governments wrongly invoking their sovereignty, or by opposition movements just as anxious to prove that they are in control of territory or populations. Nevertheless, the slogan masks a very confused notion, for intervention is not a question of law, but of power. Anyone who intervenes in the affairs of others must want to and must, above all, have the means to do so. To affirm the rights of the powerful is dangerous, when the law has been built up especially to defend the weak. Abuse is inevitable: history has shown us many situations where humanitarian reasons were given to justify political and military intervention. In humanitarian law, assistance does not constitute interference as long as it is really humanitarian, impartial, non-discriminatory, and, above all, provided by a neutral body whose credibility is sanctioned by the international

community. If, in spite of this, States refuse to admit humanitarian activities, this refusal is a violation of the law and should be treated as such!

* * *

In conclusion, I will say that the ICRC's neutrality is exemplified by its attitude towards governments and ideologies, while it demonstrates its independence through action. During the Gulf war, when Switzerland — autonomously — announced that it was to apply wide-ranging economic and financial sanctions against Iraq, the Iraqis no doubt questioned the ICRC's presence and the impartiality of its operations. They rediscovered the Committee's independence and neutrality (known to them in fact since the Iran-Iraq war, if not before) when, beginning in early February 1991, the ICRC played a role essential for its humanitarian operations: providing a liaison with the governments and armed forces of the parties to the conflict and of neutral countries, as well as with international organizations.

This also made it possible for the ICRC to convene six meetings between high-level Iraqi and coalition officers and diplomats after the cessation of hostilities in the Gulf conflict. Prisoners of war and civilian internees had to be located and repatriated and solutions found for other humanitarian problems connected with the conflict. A few days after the cease-fire, officers from the opposing armed forces, some of whom were transported into enemy territory aboard ICRC aircraft, sat down at the same table and rapidly agreed on repatriation procedures. As well as convening these meetings, the ICRC chaired them, explained the provisions of international law to the participants, advised them on how to proceed in practical terms, and supervised the repatriation operations. The ICRC's role in this case was that of a traditional intermediary, with the clear goal of facilitating the application of humanitarian law. The meetings allowed 75,000 Gulf war POWs and civilian internees to be repatriated in just four months.

In the same vein, we could mention the meetings in Geneva between belligerents in the Yugoslav conflict, allowing plenipotentiaries of the Federal, Croatian and Serbian governments and of the Federal Army to sit down at the same table, to confirm the application of humanitarian principles and to negotiate humanitarian agreements on matters such as the well-ordered release of prisoners, conferring neutral status on certain hospitals and tracing persons reported missing.

Are any more examples necessary to attest to the fact that *the world needs an ICRC exactly as it is: neutral, independent, mono-national and Swiss?*

As a final remark, allow me to quote my predecessor, Max Huber, once again, and to say with him that “the ICRC can live on only if it inspires confidence; the effectiveness of its operations depends on the trust placed in it by States and National Red Cross Societies. It must earn and preserve this trust every day through the work done by its leaders” and, may I add, by its delegates. My thanks go to the Museum for helping to maintain this trust in the ICRC, in the interest of all victims of conflict.

Cornelio Sommaruga
President
International Committee
of the Red Cross

Note: The views expressed in this speech reflect the conclusions drawn by Mr. François Bugnion, Deputy Director, Department of Principles, Law and Relations with the Movement, in his work entitled *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, currently in press.

Neutral mariners and humanitarian law: a precedent for protecting neutrals in armed conflict

by Michael Harris Hoffman*

Stormy petrels are small, dark-hued seagoing birds. In violent weather they fly between the waves for protection.¹ According to the lore of the sea, they are heralds of danger.

For centuries, neutral mariners navigating the same waters have tried to avoid the violence that engulfed seafaring warriors. In our mobile world, their experience is a cautionary tale and represents a legal precedent for all international travellers. In recent times airline passengers, expatriate workers and many others have been endangered by conflicts not their own. When that happens, their lives depend on the same principles that have been forged to protect neutrals at sea. Neutral mariners have been the stormy petrels of international law.

Two hundred years ago these sailors were ensnared in the first modern, global conflict. For ten generations they have possessed an undesirable distinction — that of being the only neutrals regularly targeted in the wars of other nations. On land, it was by chance that an expatriate was caught up in someone else's conflict. At sea, sailors of all nations crossed paths and neutral seamen, on neutral ships, ran a high risk of suffering in other people's wars.

A body of obscure but important international law took shape to protect these men and women. In the late twentieth century it stands as the only corpus of rules that specifically protect neutral nationals in armed conflict. Unlike the case in the year 1792, these rules now carry potential life or death impact for millions of other international

* The opinions expressed in this article are those of the author and not necessarily those of the American Red Cross.

¹ Goethe, Friedrich, in: Grzimek, Bernhard, ed., *Grzimek's Animal Life Encyclopedia*, Van Nostrand Reinhold Company, New York, pp. 155-156.

travellers as well. The rules are based on custom, so the full story needs to be told.

I. HUMANITARIAN RIGHTS OF NEUTRALS DURING GLOBAL WAR, 1792-1815

In 1792 France declared war on Austria, beginning a generation of conflict that spread around the globe and drew in a struggling young nation called the United States of America. When news of this war against kings reached the Americans, they rejoiced at this affirmation of their own recent revolution. That enthusiasm vanished when their merchant fleet was endangered by the contest.

It was the practice of warring states to blockade enemy ports. Neutral ships were stopped when suspected of carrying contraband that would assist the enemy's war effort. When those suspicions were confirmed by admiralty courts the cargo and vessels were declared to be "prize", confiscated and sold. The 1790s marked the beginning of a tenacious, long fought worldwide conflict. Disruptions of neutral commerce that had been recurrent but transitory became an intractable burden for neutral states.

Britain declared that it would confiscate as prize any neutral ship caught carrying provisions to the French West Indies. President Washington issued a neutrality proclamation to keep U.S. commerce out of the war, but it did no good. Many American merchant ships were captured and then condemned by British admiralty courts. In 1794, the British rescinded the order for capture of neutral ships.

That defused one crisis, leaving the U.S. government more time for another with France. That nation liberally issued privateering commissions to halt any American shipping in the West Indies that might benefit England. Privateers were private, commercially motivated sailors from every maritime state, often no more than buccaneers with official papers. The laws of war were irrelevant to their trade.

In 1796, the U.S. Secretary of State asked President Washington's legal adviser to identify the rights of American merchant seamen in the face of growing attacks on the nation's commerce. In furnishing his opinion, the Attorney General had ample guidance from the practice of the Old World.

By the mid-sixteen hundreds, it was well established in Europe that navies could stop, visit and search neutral merchantmen to see whether their cargo would assist enemy military efforts. Neutral envoys made

vigorous protest against any mistreatment of the crew on those ships.² Their frequent protests gave rise to a principle. The crew of detained vessels had to be respected as neutrals, and protected just as in time of peace.³ A different rule applied to merchant mariners of warring states. They were prisoners of war and their protection was that of the law of war.⁴

The U.S. Attorney General declared that the rights of the neutral mariners were plain: they were "citizens of the world", and in a situation where a person "for hire serves as a mariner on board of a neutral ship employed in contraband commerce with either of the belligerent powers, he is not liable to any prosecution or punishment for so doing, by the municipal laws of his own State; nor is he punishable personally, according to the laws of nations, though taken in the fact, by that belligerent nation to whose detriment the prohibited trade would operate".⁵ This reassured the government of the United States, but did not relieve the plight of the nation's sailors.

Private warfare, once a popular economic venture on land, was long abolished by the 1790s. Many nations continued the practice at sea, however, by commissioning privateers. There were handsome profits to be made when a rich cargo ship was confiscated. French-authorized privateers eagerly hunted American commerce in the Caribbean.

In early 1796 grim reports reached the U.S. The captured captain of one American merchant ship was confined, deprived of rations and then forced to wait while the captors encouraged his crew to murder him. Finally, after two months he abandoned his ship, concluding there was no prospect that he would be allowed to challenge the capture before an admiralty court. This was followed by reports of mariners killed in unprovoked cannonades, crew members beaten and killed when their ships were boarded, crews held for long periods in unhealthy conditions with high mortality, ships wantonly plundered.⁶

² Jessup, Philip, and Deak, Francis, *Neutrality: Its History, Economics and Law*, Columbia University Press, New York, 1935, p. 165.

³ *Ibid.*

⁴ Pictet, Jean, ed. *Commentary on the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, ICRC, Geneva, 1960, p. 98.

⁵ *Opinions of Attorneys General*, House of Representatives Ex., Doc. No. 55, 31st Congress 2d Session, Washington, 1851, pp. 33-35.

⁶ Lowrie, Walter and Clarke, Matthew, eds, *American State Papers*, Gales & Seaton, 1832, Vol. 2 (Foreign Relations), pp. 61-63.

In 1798 the American fleet and U.S.-commissioned privateers were arrayed for undeclared war against the French fleet and privateers. This conflict, known to history as the "Quasi War", never spread to shore. By 1799 the Quasi War had faded, and in 1800 was formally closed with a treaty of friendship and commerce — a treaty of peace deemed impolitic since a state of war had, technically, never existed. The treaty was a landmark in an oft neglected sphere of the law of war.

It compelled protection for neutral mariners, should they encounter visitation or arrest in future conflicts involving one of the parties. This was the rule: "And that more abundant care may be taken for the security of the respective citizens of the contracting parties, and to prevent their suffering injuries by the men of war, or privateers of either party, all commanders of ships of war, and privateers, and all others of the said citizens shall forbear doing any damage to those of the other party, or committing any outrage against them, and they act to the contrary, they shall be punished, and shall also be bound in their persons, and estates, to make satisfaction and reparation for all damages and the interest thereof, of whatever nature the said damages may be."⁷ Tensions eased in Caribbean waters, but in Europe blood was still pouring into the sea.

Scandinavian mariners were pressured by aggressive patrolling by the British fleet. They began travelling in convoys, under escort by their own navies. This did not go unchallenged. On 25 July 1800 the Danish frigate *Freya*, while escorting such a convoy, took on a squadron of five British ships after refusing a demand to visit and search the merchantmen. There were deaths on both sides.⁸

In February 1801 Russia, Prussia, Denmark and Sweden joined in a neutral league to protect their shipping from the British fleet. That short lived agreement was the ultimate target on 2 April 1801, when a British fleet sailed into Copenhagen harbour and struck the Danish flotilla. The battle lasted five hours and effectively ended the confederation of the neutrals.

Neutral mariners discovered that their troubles did not end when they dropped anchor in port. The Czar of Russia laid claim to Malta. In support of that claim his government seized 300 British merchant

⁷ Bevans, Charles, ed., *Treaties and Other International Agreements of the United States of America 1776-1949*, U.S. Government Printing Office, Washington, 1971, Vol. 7, p. 809.

⁸ Feldbaek, Ole, "The Anglo-Danish Convoy Conflict of 1800" in *Scandinavian Journal of History*, 2, 1977, pp. 170-171.

vessels and their crews. Britain replied by ordering an embargo on Russian, Danish and Swedish vessels in English ports and seizing vessels of those states found at sea. In the sweep that followed, Sweden alone suffered the detention of 200 of its merchant ships. That crisis ended on 7 April 1801 when the British seamen were released.⁹

Though the maritime rights of neutral states gave rise to many disputes and to acts of war, those differences never shook the fundamental principle that neutral mariners could not be mistreated. Even while events at sea were building toward another war between England and America, the British High Court of Admiralty was reaffirming the humanitarian rights of neutral mariners.

In the course of prize proceedings against a Spanish ship, it was brought to the attention of the court that the 22 detained crew had been placed in irons. The court was not convinced that the captors had justified this extreme measure, and ruled: "...that it is due to the honour of the country, and to the injury the Spaniards have sustained, that some civil compensation should be made; and with that view I decree 100 guineas to be distributed amongst the sufferers."¹⁰ The crew of *De Fire Damer* were also abused by privateers. The prize master put in charge was drunk, and violent with his captives. He also refused to take on a pilot who knew the local waters and struck a rock off Falmouth.

The Court held that owners are "answerable for the proper conduct of the persons to whose care they entrust the privateer. They ought not to put their vessel into the hands of a person capable of being guilty of such outrageous behaviour...". The Court awarded the same damages as in the prior case, finding that this was to "deal out very scanty justice...". It was noted that the privateer involved had been lost. Otherwise, the Court would have directed steps to revoke its commission.¹¹

Military confrontation over neutral rights shifted back to the New World. France and Britain both harried American merchant vessels. One British practice especially stirred anger. During visits to search for contraband goods, crews of the British fleet began taking seamen off U.S. merchant ships for forcible service in their navy. These men

⁹ Mahan, A.T. *The Influence of Sea Power Upon the French Revolution and Empire 1793-1812*, Vol. II, Reprinted by Scholarly Press, Michigan, pp. 53-55.

¹⁰ See case of *La Purissima Conception* (1803) reprinted in *The English Reports*, W. Green & Son, Ltd., 1923, Vol. 165 pp. 687-690.

¹¹ *Ibid*, see case of *De Fire Damer* (1805), pp. 804-805.

were deserters from the British Navy, it was claimed, and lawfully impressed for that service. Thousands of U.S. citizens were taken from their ships, and in 1807 and 1811 this brought on naval battles between U.S. and British ships. In 1812 the United States declared war on England, this hazard to its citizens being one of the reasons.

That same year, the U.S. made its contribution to the jurisprudence on humanitarian rights of neutrals at sea. In prize proceedings, it was determined that a U.S. merchant ship had been unjustly seized by an over-eager U.S. privateer commanded by a Captain Downie. Penalties were assessed for damage to the cargo, and a claim entertained for insults and mistreatment to William Mooney, owner of the vessel.

That claim was not upheld by the judge, who found that "warm words passed between Capt. Downie and Mr. Mooney at the time of handcuffing. I observe that though he states at large the challenge of Captain Downie, he drops altogether any account of the provocation that led to it." But lest that decision send the wrong message, he hastened to add his view of the requirements of the law of nations.

The author of this opinion was Joseph Story, founder of U.S. admiralty jurisprudence and an influential Supreme Court Justice. He wrote: "There can be no doubt of the jurisdiction of this court to punish every indignity offered to those, who, by the fortunes of war, fall into the possession of our armed ships. It would be disgraceful to the character of the country to suffer a practice to exist, which, setting at defiance the rules of civilized warfare, should consummate a triumph over an enemy by personal indignities, or modes of restraint unnecessary for the general safety. Much less ought such conduct to be tolerated towards neutrals or citizens of our own country. And where the case should be clearly made out, accompanied with undeserved suffering or malicious injury, the court could never hesitate to pronounce for exemplary damages."¹²

The war with England ended in 1814 with no resolution of the impressment problem. The end of the Napoleonic Wars in 1815 removed all urgency from the issue of visit and search. Ironically, the next step forward was taken because of a menace stalking others.

¹² See case of *The Lively* (U.S. Circuit Court for District of Massachusetts 1812) reprinted in *The Federal Cases*, West Publishing Co., St. Paul, 1895, Vol. 15, pp. 631, 636.

II. AN ERA OF PROGRESS FOR NEUTRALS, 1815-1914.

At the end of the Napoleonic Wars, the British government began a long diplomatic campaign to suppress the maritime slave trade. It had only modest success. In 1842, mariners benefited from an implied concession made to the U.S. government in those efforts. The governments ratified a treaty that year, pledging cooperation to end the slave trade. The U.S. government was concerned that to cooperate would be to condone impressment. The British Foreign Minister assured his counterpart that there was "much reason to hope that a satisfactory arrangement" could be made on this question. It never was, but by the 1850's his government had abandoned any claim of a right to impress mariners sailing under other flags.¹³

On 16 April 1856 the Declaration Respecting Maritime Law was signed in Paris. This agreement, formulated in furtherance of the treaty that ended the Crimean War, established that neutral goods are not subject to capture except when contraband of war. The humanitarian significance of this declaration was in the pronouncement that "Privateering is, and remains, abolished."¹⁴ Freeing the seas of commerce-driven combatants was a major step forward in protecting neutral and belligerent seamen from the excesses of war. The United States was not a party to the Declaration, but soon had another opportunity to contribute to the development of the law on maritime neutrals.

When the War of Secession began in 1861, President Lincoln declared a blockade on the ports of the rebelling states. It took years for the U.S. Navy to make it effective. But from the beginning blockade running merchant ships were captured; as their numbers grew so did disputes over the treatment of crew.

The schooner *Adeline* was captured in 1861 and the crew included three recalcitrant Englishmen. They admitted that they had run the blockade before. It was standard practice to release foreign blockade runners promptly, but one Commander Woodhull decided that there was no need to tolerate repeat offenders. He came up with a simple expedient.

He forced them to promise, under oath, that they would not "again embark in a like enterprise or interfere with the legitimate object of

¹³ Moore, John Bassett, *A Digest of International Law*, Government Printing Office, Washington, 1906, Vol. 2, pp. 999-1001.

¹⁴ See text in Schindler, Dietrich and Toman, Jiri, eds, *The Laws of Armed Conflicts*, Martinus Nijhoff Publishers, Dordrecht, 1988, p. 788, "Declaration Respecting Maritime Law, (1856)".

the United States government in suppressing the rebellion".¹⁵ A protest from the British government followed and received prompt reply.

On advice of the Secretary of State, the Secretary of the Navy Department instructed the commander of the blockading squadron that there was no authority to make such demands on neutral merchant seamen. "It may be lawful to detain as witnesses such persons as may be found on board a vessel charged with a breach of the blockade, when their testimony may be indispensable to the administration of justice; but when captured in a neutral vessel, they can not be considered, and ought not to be treated, as prisoners of war. The three persons, therefore, who were conditionally released, are to be regarded as absolved from the obligation required of them. You will please communicate to the commanding officers in your squadron the principle herein stated, for their guidance".¹⁶

On occasion, exasperated U.S. authorities bent the rules, delaying release for long periods of time to take testimony or investigate a claim of foreign nationality.¹⁷ These practices strained diplomatic relations and the rules protecting neutrals, but the humanitarian obligations to those sailors were never in dispute.

The revolution in the law of land warfare that began with the Geneva Convention of 1864 spread to the law of war at sea with the 1868 draft articles for a maritime treaty. Humanitarian interests of all seamen were served during the Franco-Prussian War of 1870, when the traditional practice of holding belligerent merchant mariners as prisoners of war gave way to a policy requiring that they be set free.¹⁸ Not too long after, neutral mariners were for the first time, identified for protection in model rules.

In 1882 the Institute of International Law adopted draft regulations on prize law. These rules explicitly covered the detention and seizure of neutral as well as belligerent merchant ships. Clear humanitarian obligations were set forth. "The Captain of the captor vessel is responsible for the good treatment and entertainment of the persons found on board the vessel seized by the crew of the captor vessel and by the crew which mans the vessel seized; he should not permit even those

¹⁵ *Message of the President of the United States to the Two Houses of Congress*, Government Printing Office Washington, Ex. Doc. No. 1, 37th Congress, 3d Session, 1862, Vol. 1, p. 243.

¹⁶ *Official Records of the Union and Confederate Navies in the War of the Rebellion*, Government Printing Office, Washington, 1897, Series I, Vol. 6, p. 498.

¹⁷ Bernath, Stuart, *Squall Across the Atlantic: American Civil War Prize Cases and Diplomacy*, University of California Press, Berkeley, 1970, pp. 142-143.

¹⁸ *Op. cit.*, note 4, p. 98.

persons who are prisoners of war to be employed at humiliating occupations".¹⁹ For many years, practice and doctrine were in agreement with this standard.

During the Spanish-American War of 1898 both governments required total restraint by their naval forces when visiting neutral merchant ships. The Spanish government ordered that boarding operations "be exercised with the greatest moderation by the belligerent, special care being taken to avoid causing the neutral any extortion, damage, or trouble that is not absolutely justifiable". Officers conducting these visits were also to "act without prejudice to the good faith of the neutral being visited, and without loosing sight of the consideration and respect that nations owe to one another".²⁰

American naval officers were also under clear instructions on the treatment of neutrals caught attempting to break through their blockade. "The crews of blockade runners are not enemies and should be treated not as prisoners of war, but with every consideration. Any of the officers or crew, however, whose testimony before the prize court may be desired, should be detained as witnesses".²¹

During the Russo-Japanese War of 1904 the crews of some neutral vessels had harrowing encounters with the Russian Navy. The rule that detained ships went to port was sometimes replaced with a new practice: they were sunk. Some mariners had to scramble off in lifeboats as fighting vessels moved in to destroy their ships.²² The Japanese complained of this, but warning the mariners did receive and evacuation they did get. This turn of events took merchant seamen halfway into twentieth century warfare. In a few years they finished that journey. First, there were important legal developments.

The rules of maritime warfare were revised by the Hague Conventions of 1907. Hague Convention XI stipulated that when enemy merchant ships were captured, those crew members who were neutral nationals were not to be taken as prisoners of war. Officers were to be granted the same protection if they promised in writing not to serve on an enemy ship. Similar protections were accorded to merchant crews

¹⁹ Scott, James Brown, ed., *Resolutions of the Institute of International Law*, Oxford University Press, New York, 1916, pp. 46, 56.

²⁰ *Papers Relating to the Foreign Relations of the United States 1898*, Kraus Reprint Corporation, New York, 1968, pp. 777-778.

²¹ *Ibid*, p. 781.

²² Takahashi, Sakuye, *International Law Applied to the Russo-Japanese War*, (American editor), The Banks law Publishing Co., New York, 1908, pp. 317-330.

of belligerent states.²³ Other rules for the protection of neutrals soon followed.

The London Naval Conference of 1909 produced a declaration on the laws of naval war. One of its rules required that all crew on board neutral vessels had to be placed in safety before the ships could be destroyed.²⁴ Although the declaration was never ratified, it was influential in the policies of maritime states.

The German Prize Ordinance of 1909 prescribed the unconditional release of the crew when a neutral ship was captured for carrying contraband, or for breach of blockade. Japanese regulations of 1914 also instructed that crew on captured neutral vessels were not to be made prisoners of war. If needed as witnesses, they could be detained for that purpose.²⁵ Unfortunately, neutral mariners soon discovered, along with soldiers and civilians of belligerent states, that the technology of modern war overwhelmed the legal regimes that had taken so long to build. The twentieth century was to be very dangerous for neutrals at sea.

III. DISTINCTIONS BETWEEN MARINERS VANISH, 1914-1945

In the early months of World War I Germany sent out commerce raiding ships that distinguished between their targets by traditional visit and search. Even when ships were determined to be of enemy nationality, crew were evacuated before the vessels were destroyed. By the end of 1914 these raiders had been sunk by the British. Germany began to rely on newer maritime technology.

On 20 October 1914, the British steamer *S.S. Glitra* was stopped by a U-boat. In a model demonstration of compliance with the rules of war, the crew were allowed to evacuate. The sea cocks were then opened and the ship sunk.²⁶ No lives were lost and little attention was paid to the incident.

²³ *Op. cit.*, note 14, p. 821, Hague Convention XI of 1907, Arts. 5,6.

²⁴ *Op. cit.* note 14, p. 852, Declaration Concerning the Laws of Naval War, Art. 50.

²⁵ Hackworth, Green Haywood, *Digest of International Law*, U.S. Government Printing Office, Washington, 1943, Vol. 7, p. 247.

²⁶ Horne, Charles F., ed., *Source Records of the Great War*. U.S., s.: National Alumni, 1923, Vol. 3, p. 53.

It was soon discovered that the submarine was a vulnerable boat when it surfaced. Winston S. Churchill, then serving as First Lord of the Admiralty, moved with characteristic determination and began arming British merchant ships with guns to drive off U-boats.²⁷ Visit and search, followed by orderly evacuation and destruction of Allied merchant ships, was a short lived practice. German U-boats began to strike without warning from beneath the surface of the sea. Confirming the nationality of merchant ships through a periscope was not always possible, determining whether a neutral ship carried contraband goods was out of the question.

On 4 February 1915, the German government announced that "The waters round Great Britain and Ireland, including the English Channel, are hereby proclaimed a war region." Commencing on 18 February 1915, all enemy merchant ships found in the region would be destroyed, and neutral merchant ships in the area might also be endangered because "attacks intended for hostile ships may affect neutral ships also".²⁸ Danger came on schedule.

On 19 February 1915, the Norwegian oil steamer *Belridge* was torpedoed but managed to make port. Between then and the end of May three Norwegian and two Dutch merchant ships, and one American tanker were sunk by U-boats operating in the region. U-boats also sank merchant ships and fishing trawlers of belligerent states.²⁹ The traditional protection of visit and search was dying out for mariners of warring and neutral nations alike.

Under intense pressure, the German government yielded in 1916 and issued the following order to its naval forces. "In accordance with the general principles of visit and search and the destruction of merchant vessels, recognized by international law, such vessels, both within and without the area declared a naval war zone, shall not be sunk without warning and without saving human lives unless the ship attempts to escape or offer resistance".³⁰ That policy was abandoned on 1 February 1917, when the German government gave notice that neutral ships would navigate in designated blockade zones at their own risk. This led to diplomatic crisis and, ultimately, the U.S. declaration of war on Germany. Post war efforts to build a new legal order included an attempt at restoring pre-1914 visit and search practices.

²⁷ Churchill, Winston S., *The World Crisis*, Charles Scribner's Sons, New York, 1931, p. 749.

²⁸ *Op. cit.*, note 26, p. 56.

²⁹ *Op. cit.*, note 26, pp. 59-64.

³⁰ *Op. cit.*, note 26, vol.4 pp. 100-101.

At the Washington Naval Conference of 1921-1922, the British representative recommended a ban on submarines as “a weapon of murder and piracy”. Other representatives also opined that German submarine operations in World War I had violated international law. However, there was no agreement to abolish this weapon.³¹ The London Naval Treaty of 1930 required that “submarines must conform to the rules of International Law to which surface vessels are subject.” The treaty was terminated in 1936, but that requirement was kept alive by a Proces-Verbal.³²

Neutral shipping was quickly targeted in World War II. In late September 1939 Hitler authorized the unconditional sinking of enemy merchant ships.³³ Before the end of the year neutral shipping was added to the target list. All vessels except those of Italy, Japan, Spain and Russia could be sunk within designated zones.³⁴ By late 1941, all major maritime states were at war. During that brief period when there were neutral maritime powers, they had no safe passage on the high seas.

The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea was signed on 12 August 1949. It updated the humanitarian protection accorded to members of belligerent naval forces and merchant crews during armed conflict. As neutral mariners are not such persons, the Geneva Conventions of 1949 do not clearly protect them.³⁵ A recent conflict proved that military hazards still wait for them at sea.

IV. OTHER NEUTRALS BEGIN SHARING THE MARINERS' RISKS, 1984-1991

In the years after World War II death did not come for neutral mariners from beneath the waves. In the 1980s it returned — this time

³¹ Mallison, Sally V., and Mallison, W. Thomas, “Naval Targeting: Lawful Objects of Attack.” *International Law Studies 1991: The Law of Naval Operations*. Ed. Robertson, Jr., Horace B., Naval War College Press, Newport, vol. 64, p. 246.

³² *Ibid.*, p. 247.

³³ Morison, Samuel Eliot, *History of United States Naval Operations in World War Two*. Little, Brown and Company, Boston, 1975, Vol. 1, p. 9.

³⁴ *Ibid.*, pp. 9-10.

³⁵ See Article 2 common to the four Geneva Conventions of 1949, which stipulates that each Convention shall apply “to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties...”. Nothing is said about application to situations involving neutrals.

from the surface and the air. Between 1984 and 1988, attacks on neutral merchant shipping were relentless during the Iran-Iraq conflict.

During military operations in the Gulf that have come to be known as the Tanker War, there were at least 325 hits on ships flying 35 neutral flags, and at least 123 deaths among neutral merchant seamen.³⁶ The assaults were made by jets, helicopters, and gunboats. Mines were another threat. It has been asserted that some attacks had as their purpose the killing of merchant seamen.³⁷

Neutral mariners still need protection. One may view them as an anomaly in that they are targets of deliberate attack in time of war, but not protected by the express terms of the Geneva Conventions of 1949. In an increasingly mobile world, they should be recognized as the first of many neutrals who will, from this time on, need protection because of their presence during the armed conflicts of other nations. In the months leading up to the Gulf War of 1991 there was a major international crisis because of foreign guest workers trapped in, and fleeing from, the scene of impending conflict. With increasing numbers of labourers, managers, civil servants, students, professionals, scholars and tourists combing the globe, the chances of repeated crisis are high. Many have a potential stake in the protection of neutrals during armed conflict.

V. NEUTRAL MARINERS: STATUS AND IMPLICATIONS

The legal status of neutral mariners in armed conflict is well stated by the US Navy. In its Commander's Handbook on the Law of Naval Operations is found the following guidance: "The officers and crews of captured neutral merchant vessels and civil aircraft who are nationals of a neutral nation do not become prisoners of war and must be repatriated as soon as circumstances reasonably permit. This rule applies equally to the officers and crews of neutral vessels and aircraft which have assumed the character of enemy merchant vessels or aircraft by operating under enemy control or resisting visit and search".³⁸ This guidance is consistent with customary precedent and the

³⁶ Intertanko, *Iran/Iraq Conflict 1984/1988. The Tanker War — No End?* 3rd Edition, International Association of Independent Tanker Owners, Norway, 1988. pp. 42-43.

³⁷ *Ibid.*, pp. 23-25.

³⁸ *The Commander's Handbook on the Law of Naval Operations*, NWP 9 (Rev. A), FMFM 1-10, para. 7.9.2., Reprinted in Robertson, Horace B., ed., *International Law Studies 1991: The Law of Naval Operations*, Vol. 64, Naval War College Press, Newport, pp. 472-473.

Hague Rules of 1907. As in much of international humanitarian law, the practice of nations is not always commensurate with their obligations.

Varied sources of law exist to protect neutral mariners.

1. Customary rules as found in court opinions, military manuals and practice, and model codes.

2. Conventions which apply by inference. Although specific references to neutral mariners are sparse, the protections of the Hague and Geneva conventions apply when neutral merchant seamen appear to become belligerents. This principle was established in the Hague Convention V of 1907 Respecting the Rights and Duties of Neutral Powers and Persons In Case of War on Land. In a rare legal reference to the protection of neutrals in land warfare, it is provided that a neutral "shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent state could be for the same act".³⁹

3. The customary obligation to rescue and repatriate shipwrecked sailors is an ancient one. In modern times it has been set out in the Geneva Convention on the High Seas of 1958 and the U.N. Convention on the Law of the Sea of 1982. Both mandate assistance to anyone found in danger at sea, the rescue of persons in distress and, after collision, the rendering of assistance to other ships and crews.⁴⁰ If a merchant vessel is attacked, the crew cannot then be left to their own devices. If not aided and protected under the rules for belligerents, they must be aided and protected under the peacetime rules of the high seas.

The determination of governments to protect their mariners may, indirectly, be responsible for their neglected status in international humanitarian law. By implication, to urge measures for their wartime protection is to acknowledge that they might be attacked. Governments do not send such signals. In the months before the Gulf War of 1991, governments were reluctant to assert that the Geneva Conventions were applicable to detainees because that would have implied an existing state of armed conflict.

³⁹ *Op. cit.*, note 14, p. 945. Hague Convention V of 1907, Art. 17.

⁴⁰ U.N. Convention on the Law of the Sea, Art. 98, and Geneva Convention on the High Seas, Art. 12.

Steps can be taken to strengthen protections for neutral mariners:

1. Efforts should be made to ensure that the doctrine and practice of all navies are consistent with their humanitarian obligations.

2. Nations which may undertake action against neutral merchant shipping must recognize their obligation to apply, at a minimum, the same humanitarian protection accorded to belligerents in like circumstances. Concern about political consequences will be removed if other governments declare that they recognize the humanitarian purpose and will not consider such application to be, in itself, a declaration of hostility toward the neutral state.

3. In any future negotiations to update the law of naval warfare, provision should be made for the protection of neutral merchant seamen who are attacked or detained by belligerents. A brief provision, such as the following, would embrace generations of custom: *"During all military operations conducted in furtherance of blockades and maritime trade restrictions relating to armed conflict, the enforcing authorities shall, as a minimum, accord non-combatant crew members and passengers of non-belligerent and neutral civilian vessels, who are engaged in lawful maritime activities, the full protection of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea and the Geneva Convention Relative to the Protection of Civilian Persons in time of War"*.

Fundamental principles derive from the customary law relating to neutral mariners in armed conflict. Non-combatant neutrals endangered in the course of military operations are entitled to the full protection of international humanitarian law. If detained, such persons are entitled to prompt repatriation. Neutrals owe no duty of loyalty to a belligerent state, and cannot be punished because their acts happen to aid one side or the other in an armed conflict. If their acts are those of a belligerent, they have a right to the same protection as a belligerent national in like circumstances.

In defining categories of persons entitled to protection under international humanitarian law, the thorniest legal issue of our century has been the sorting of lawful from unlawful combatants in conventional and guerrilla units. In the twenty-first century, the great challenge may be in the sorting and protection of neutral and non-neutral civilians. Neutral rights and the treatment of neutral mariners have been issues that led nations to war. That should be motive enough for governments to address those questions before such crises begin. In the meantime, the experience of the neutral mariner has shaped a body of customary

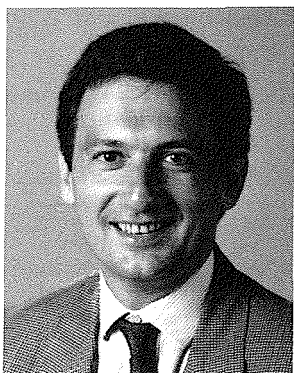
international law. It provides guidance for their protection and that of other neutrals who are present in places of conflict.

The centenary of Columbus' voyage has provoked many responses. Something is overlooked in the debate. That small part of the human race which has made its livelihood at sea has had a disproportionate impact on history. These mariners have established contacts among civilizations, opened pathways for migration, made possible the exchange of goods and knowledge, pushed forward international law. To review the story of neutral mariners and humanitarian law is to reaffirm this. The mariner's experience affects us all.

Michael Harris Hoffman

Michael Harris Hoffman is special adviser to the American Red Cross on international humanitarian law. The basic thesis in this paper was developed in a speech delivered for the American Red Cross. His article on customary law and non-international armed conflict appeared in the July-August 1990 issue of the *Review*. He is an attorney engaged in the private practice of refugee, immigration and international economic development law in Washington, D.C.

Bosnia-Herzegovina: ICRC delegate dies in Sarajevo



On 19 May 1992, early in the morning, a delegate of the International Committee of the Red Cross, Mr. Frédéric Maurice, 39, died at the civilian hospital in Sarajevo of injuries received the previous day.

Mr. Maurice had been injured together with two other ICRC staff in an attack on a Red Cross convoy carrying emergency medical supplies for the civilian hospital in Sarajevo.

Mr. Maurice, who was married and had two children, joined the ICRC in 1980. During his twelve years with the institution he carried out humanitarian missions in Israel, Iran, Angola and Ethiopia, in the course of which he assumed responsibilities of great importance. Recently assigned to the ICRC Directorate of Operations, he had volunteered to replace the head of the ICRC delegation in Sarajevo.

The ICRC, deeply saddened by Mr. Maurice's death, conveys its profound sympathy to his family.

A TRIBUTE TO FREDERIC MAURICE

In September 1990 Frédéric Maurice became my assistant at the Directorate of Operations. His keen intelligence, his vast experience of operational matters and his communicative nature, coupled with a sense of constructive criticism, were always of invaluable help. Yet he found that his role as adviser, centred as it was on theory and analysis, was too inactive, too far removed from the decisions which shape the actual course of operations; because of this, every so often he felt

the need to take the lead on an assignment in the field. In April 1991, for instance, he went to Iraqi Kurdistan and the Basrah region to assess needs in the aftermath of the Gulf war and launch major relief programmes there; in July 1991 he was in charge of prisoner exchange operations in Slovenia.

One of these many missions in which his creativity, commitment and courage found their full expression, cost him his life. Frédéric was on his way to Sarajevo, where he was to take over as head of delegation, when his convoy came under heavy attack as it entered the town. In all, three ICRC staff members were hurt in the attack; Frédéric died of his injuries.

Of course the ICRC is highly indignant at what has happened. Losing a delegate on mission, especially in such circumstances, is a terrible thing. But we must not forget that nearly all ICRC missions carry a certain amount of risk. Frédéric's mission to the Angolan Planalto, at the height of the civil war in the country, was also hazardous. In war-torn and famine-stricken Ethiopia, too, where he worked from 1985 to 1987, organizing food convoys was not without danger. What is more, it was in Frédéric's nature to assume fully his responsibilities as head of delegation even in the most difficult conditions. His missions to the Middle East may have seemed less risky, but although the intensity and the nature of hostilities were not comparable to the savagery of the fighting in Bosnia, tension was permanently running high.

Frédéric was no humanitarian adventurer. His love of action was not prompted by a taste for danger or for things exotic; it was rather an ethical motivation, buttressed by a certain idea of humanitarian law and its underlying philosophy.

His single-mindedness in transforming his ideas into action may sometimes have given the impression of intransigence. But these uncompromising opinions of his were perhaps simply the logical outcome of personal steadfastness to which he attached great importance. A few months ago Frédéric spoke to me with great enthusiasm about the biography of Marcus Aurelius, which he was reading at the time. An ardent believer in free will, Frédéric was fascinated by the Stoic philosophy of this great emperor, and had been struck by phrases such as: "We must therefore make haste, not only because with each passing moment we are closer to death, but also because as we get older we lose our understanding of problems and the ability to attend to them."

Frédéric had a clear and ambitious concept of ICRC work and he strove to turn it into fact. A distinctive feature of this concept was

realism. Every humanitarian operation occurs at a certain point in the history of international relations and in the context of a balance of power which cannot be ignored. It must also take into account the realities of the situation on the spot. Frédéric abhorred abstract theory unrelated to actual fact. In that sense he was against all dogma, considering that policy always had to be adapted to the specific situation and circumstances.

His concept of ICRC work was also characterized by **openness**, for he thought in terms of “humanitarian” action rather than “ICRC” action. Although he was deeply attached to our institution, he often railed against stubborn institutional narrow-mindedness and pressed for what he judged to be an efficient and comprehensive operational approach. He thought that everything possible must be done in order to gain access to the victims, be they prisoners, displaced persons, the sick or the wounded, and his determination to use all diplomatic and logistical means available to attain that goal knew no bounds.

Frédéric's concept of humanitarian work was also marked by an **integrated approach**. He was engaged in developing a veritable philosophy of international humanitarian law. His analysis led him to explain the underlying reasons for this branch of law. After making a sort of phenomenological study of war, he concluded that it was necessary to have a “system of legal substitution” specially designed for war situations. He saw it as the “essence of protection”, which itself is thus nothing other than the self-imposed compliance by States with the rules of international humanitarian law in time of armed conflict.

In addition to the collapse of legislative and administrative structures, war leads to a flood of violence which, according to Frédéric, prompted the ICRC to “develop an operational approach combining all specialized services and activities needed to meet the requirements of all the victims”. Law, diplomacy and activity in the field thus form a coherent whole.

Pursuing this integrated, global approach, Frédéric was studying the great challenges currently facing the ICRC. On the subject of **communication** and the media, he stressed that the ICRC's communication strategy should be an integral part of its operational approach, and not merely incidental to it. He had already drafted broad guidelines regarding the changes to be made in the content of the ICRC's message and its methods of communication.

He also devoted much time and thought to the question of humanitarian **intervention**. In more than one forum he had already stressed the clear distinction, which he saw as crucial, between intervention

that could be termed political and arose from the joint responsibility of States in humanitarian matters, and direct operational intervention, which was subject to specific constraints. Frédéric had also intended to undertake a study on a question which has thus far been largely neglected, that of relations between human rights and humanitarian law.

This brief tribute evokes but a few of the many qualities which characterized Frédéric's personality and thinking. We are deeply saddened by his premature death, but his memory and his ideas will live on, for many of them will be taken up and transformed into action at the ICRC.

We are all with Frédéric's family, his wife and his two children in our thoughts, and convey to them our deepest sympathy.

Jean de Courten
ICRC Director of Operations

PRESIDENTIAL MISSIONS

In April and May ICRC President Cornelio Sommaruga carried out missions in Switzerland, Portugal and Spain.

● **Bern (2 April 1992)**

The ICRC President, on an official visit to Bern on 2 April, was received by Mr. René Felber, President of the Swiss Confederation and Head of the Federal Department of Foreign Affairs, Mr. Kaspar Villiger, Head of the Federal Military Department, Mr. Otto Stich, Head of the Federal Finance Department, and Mr. Jakob Kellenberger, Secretary of State. Mr. Sommaruga was accompanied by the two ICRC Vice-Presidents, Mr. Pierre Keller and Mr. Claudio Caratsch, and by Mr. Yves Sandoz, Director of the Department of Principles, Law and Relations with the Movement, Mr. Michel Convers, Mr. André Pasquier and Mr. Dominique Buff.

The ICRC delegation held a working session with a delegation from the Federal Department of Foreign Affairs, headed by Ambassador François Nordmann, Head of the Directorate for International Organizations.

The talks between the ICRC and the Swiss authorities focused on the neutrality and independence of the ICRC with regard to the Confederation and the possibility of a headquarters agreement being concluded between them. Other matters discussed were the International Conference of the Red Cross and Red Crescent, the question of financing the ICRC's activities, matters connected with the International Fact-Finding Commission, and the conformity of new weapons with humanitarian law.

At the meeting Mr. Sommaruga reviewed the ICRC's current operations, particularly those in the Horn of Africa, Afghanistan and the Caucasus. Afterwards he gave a press conference for journalists accredited to the Swiss Federal Parliament.

At the end of his visit, the ICRC President had the opportunity to

talk with Federal Councillor Jean-Pascal Delamuraz, Head of the Federal Department of Public Economy.

The federal authorities confirmed their strong support for the ICRC's activities throughout the world, and stated their willingness to draft the text of a headquarters agreement between the Confederation and the ICRC which would enhance the latter's independence in law. They expressed approval of the approaches made with a view to convening the International Conference of the Red Cross and Red Crescent in 1993. Finally, in the financial context, it was suggested that the Confederation, whose contribution to the ICRC's consolidated budget for 1991 amounted to 84 million Swiss francs (i.e., 12.5% of the total budget), might consider making special contributions to support the institution's operational activities.

● **Lisbon (7 May 1992)**

At the invitation of the Director-General for Foreign Policy at the Portuguese Foreign Ministry, President Sommaruga attended a working lunch on 7 May together with the twelve heads of political departments of the European Community Member States, the Secretary-General for Political Cooperation and the EC Commission's Director for Intergovernmental Cooperation.

During the discussions, the ICRC President described the problems encountered by the ICRC in its work in the Caucasus, in Afghanistan, Iran, Cambodia, Somalia, Mozambique, Angola and East Timor, and above all in its operations in Bosnia-Herzegovina. He also referred to the institution's financial situation and to the question of the International Conference of the Red Cross and Red Crescent.

The meeting provided a useful opportunity to draw these matters to the attention of the heads of political departments, who expressed their appreciation of the ICRC's activities.

Mr. Sommaruga later had talks with Ambassador Cutilheiro, appointed by the EC Presidency to coordinate negotiations concerning Bosnia-Herzegovina.

Seville, Cordoba (8-10 May 1992)

From Lisbon President Sommaruga travelled to Seville, where, as the guest of the Spanish Government, he attended the celebrations marking World Red Cross and Red Crescent Day, 8 May, on the site

of the Universal Exposition (see "The Movement in Seville", p. 299). He then went on to Cordoba, where several statutory meetings of the Movement were taking place (see "Meetings in Cordoba", p. 304).

In the Red Cross and Red Crescent World

THE RED CROSS AND RED CRESCENT
AT EXPO '92 IN SEVILLE

MEETING THE CHALLENGE OF THE FUTURE

To mark the participation of the International Red Cross and Red Crescent Movement in the events commemorating the 500th anniversary of the Meeting of Two Worlds at the Seville world fair, *Mrs. Carmen Mestre Vergara*, President of the Spanish Red Cross and General Commissioner of the Movement's Pavilion at Expo '92, has kindly agreed to write a few words on the significance of Expo '92 and of the Red Cross and Red Crescent pavilion for dissemination of knowledge of the Movement's principles and activities, and on how Red Cross and Red Crescent volunteers can meet the present and future challenges facing the Movement.

* * *

I am very grateful to the International Review of the Red Cross for giving me the opportunity to address a message to all its readers on the International Red Cross and Red Crescent Movement's participation in the events marking the 500th anniversary of the Meeting of Two Worlds, in particular Expo '92 in Seville.

This is a once-in-a-lifetime chance, not only for Spain and the Spanish Red Cross, but also for the Movement, whose pavilion in Seville will familiarize millions of visitors from all five continents with the full range of our humanitarian activities. It is also an ideal occasion for spreading knowledge of the Fundamental Principles.

The Movement's pavilion makes a clear statement: in a world in which injustice, abandonment and conflict are commonplace, there is still room for hope. The Age of Discovery we are commemorating heralded a period of unprecedented scientific progress; the effects on overall human development were positive, but many have since found themselves excluded from that process, the victims of poverty and neglect.

The pavilion is also an unequivocal symbol: it represents the world in which the Red Cross works and the Movement's compassion for the suffering

of others. This is why the sound of a heartbeat can be heard on entering. The pavilion has two distinct sections. The visitor first walks in darkness through an area where he is brought face to face with war and disaster. State-of-the-art audiovisual technology is used to show devastating images of volcanic eruptions, earthquakes, floods and other natural disasters, and later scenes of war and the victims of conflict. The final images highlight the tragic plight of refugees, displaced populations and people forced to flee the fighting.

But all is not darkness and desolation. The visitor then proceeds into the second section, which is sun-filled and wide open. It focuses on the activities of the Red Cross and Red Crescent, giving a practical view of the Movement's principles and the people who work to achieve its ideal of solidarity. Volunteers from all over the world are there to greet the visitors and show them around; they embody the human warmth which is an integral part of each of the Movement's activities.

Our efforts to spread knowledge of the Movement's message are prompted by one paramount concern: to serve, to provide impartial assistance to those enduring misfortune or want, loneliness or hopelessness, the effects of accident or illness. We try to make up for the negative aspects of the human condition, standing by those in distress and supporting anyone who is engaged in the struggle for a more humane and just world.

The Movement can really be understood only through the work of its volunteers, the men and women who, guided by the Fundamental Principles and each in his or her own way, put our words into action. They are deterred by no considerations of ideology or class, financial status, religious or political beliefs. They do not ask who is suffering, they simply set out to solve the problem, working impartially for all those in need.

Seville is the best possible focal point for the dissemination of our ideals of fellowship and humanitarian action, both of which can be met thanks to the endeavours of all citizens, in particular those who so generously give of their time and efforts to help others.

I wish to take this opportunity to express my gratitude to the volunteers, the sponsors and the Movement's leaders, without whom this ambitious project — our response to the problems of today's world and, most importantly, to the challenges of the future — would not have been possible.

Carmen Mestre Vergara
*President of the Spanish Red Cross
and General Commissioner of the International
Red Cross and Red Crescent Movement's Pavilion
at Expo '92 in Seville*

THE MOVEMENT IN SEVILLE

(8 May 1992)

In adopting Resolution 10 at its session of 27 November 1987 in Rio de Janeiro, the Council of Delegates decided that the International Red Cross and Red Crescent Movement should take part in the Universal Exposition planned for the months of April to October 1992 in Seville, Spain. The decision was confirmed by the Council two years later. The Exposition is a world fair in which more than 100 countries, some 20 international organizations and a large number of multinational companies are represented. It is expected to attract about 18 million visitors. The Council saw that this would not only provide an exceptional opportunity to publicize the message and the humanitarian activities of the Movement over a six-month period, but would also be an ideal focal point for the celebration of World Red Cross and Red Crescent Day on 8 May 1992.

I. The Red Cross and Red Crescent Pavilion

The Movement's Pavilion stands in the Expo '92 grounds, on the island of Cartuja, alongside the pavilions of other international organizations. It was inaugurated on 19 April 1992, the Expositions's official opening day, by Mrs. Carmen Mestre Vergara, President of the Spanish Red Cross and General Commissioner of the pavilion. In her address, Mrs. Mestre noted that "the pavilion and its associated programmes will allow many visitors to find out what the Movement is doing around the world for human life and dignity".

A tall mast, in the red and white colours of the Movement, and visible from all parts of the Expo site, draws attention to the building, which is audacious in design, deliberately lopsided, with sloping walls, to symbolize a world destabilized by war and disasters. Inside, the pavilion is divided into four areas where advanced audiovisual technology, using inclined planes and screens, mirrors and lights, brings the visitors literally face to face with natural disasters and armed conflicts, before presenting the principles and the wide-range of activ-

ities carried out by the Movement's members both in time of war and in peacetime.

The emphasis is on the visitor's participation in the Movement's work. A space described as a "personalized information" area, equipped with computer terminals, enables the visitor to supply personal details, to indicate his or her intention to support the Red Cross or the Red Crescent, and to obtain information on how to become an active member. The data collected is sent by computer to the National Society in the visitor's home country. Using interactive video screens, the visitor can access extra information on ways in which he or she can work with the Movement.

The pavilion is staffed by four groups comprising a total of 450 young volunteers from 43 National Societies worldwide. They welcome visitors, act as guides with the pavilion, and illustrate the Movement's work through musical and theatrical performances on the Expo site — in short, they act as bearers of the Movement's message. This international volunteer programme is coordinated by the International Promotion Bureau (IPB), with the help of the Spanish Red Cross. It is sponsored by the Bayer Group of chemical and pharmaceutical companies.

In addition, first aid for the public at Expo '92 has been organized by the Spanish Red Cross, with five first-aid posts located at various points around the island, staffed by properly trained volunteers, and a river rescue service on the Guadalquivir.

II. World Red Cross and Red Crescent Day

On 8 May 1992, the leaders of the International Red Cross and Red Crescent Movement called on the governments and peoples of all countries to "Unite against Disaster". Their appeal (*see below, p. 302*) was launched from the Palenque theatre, in the heart of the Expo '92 site, during a brief ceremony attended by the members of the Federation's Executive Council and by representatives of the ICRC, the Federation Secretariat and the Spanish Red Cross.

Following the opening address by Expo '92 General Commissioner Emilio Cassinello, the Chairman of the Standing Commission of the Red Cross and Red Crescent, Dr. Ahmad Abu-Goura, pointed out that the context of the Universal Exposition was singularly appropriate for the celebration of the World Day of a Movement whose universality was one of its fundamental principles. Yet, he emphasized, the most important of these principles remained humanity, and he urged all

members of the Movement to “redouble their efforts so that the voice of humanity may be heard and heeded and lasting peace will finally prevail throughout the world”.

ICRC President Cornelio Sommaruga stated that, “with the help of governments and the support of the media, we must, in complete independence and neutrality, promote respect for the essential rules of humanity, in order to relieve the suffering of millions of victims”.

Mr. Mario Villarroel, President of the International Federation of Red Cross and Red Crescent Societies, said that Expo '92 showed the way to the 21st century. But it would be an “empty” century without the spirit of humanity. “Progress will not bring peace unless men and women all over the world are able to lead decent lives.”

Both Presidents stressed the vital need to respect human life and dignity in wars and disasters, in order to save millions of lives and to prevent suffering in the years to come.

Mrs. Carmen Mestre, President of the Spanish Red Cross, declared: “Today, we must everywhere reaffirm that we intend to show solidarity with those in need”, and Mrs. Matilde Fernández, Spain's Minister of Social Welfare, paid tribute to the humanitarian work of the Movement.

This official ceremony, which formed the central link in a chain of events of the same kind organized all over the world, ended with a public performance of mime and music, entitled “The world of humanity”, presented by 100 Red Cross and Red Crescent volunteers and by the 150-strong Bayer women's choir.

WORLD RED CROSS AND RED CRESCENT DAY 1992

**JOINT MESSAGE OF THE INTERNATIONAL FEDERATION
OF THE RED CROSS AND RED CRESCENT SOCIETIES
AND OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS**

Today, 8 May 1992, is World Red Cross and Red Crescent Day.

On this day, the anniversary of the birthday of its founder, Henry Dunant, the International Red Cross and Red Crescent Movement makes a solemn appeal:

“In the name of Humanity, let us unite against disasters!”

The lives of millions of people are disrupted and ruined by calamities and disasters. Famines, floods, droughts, hurricanes and all kinds of scourges cause unimaginable suffering throughout the world. Wars force entire populations into exile and bring about destitution, sickness and death.

Every day, in 150 countries, millions of Red Cross and Red Crescent volunteers, delegates and staff are striving impartially to assist and protect the victims of disasters. They help provide a roof over their heads, food, water and medical care. And when the media spotlight has moved on, the Movement is still there, trying to build a better future with them.

The task of the Red Cross and Red Crescent is not only to alleviate suffering but also to prevent it.

To assist local communities and families in preparing and equipping themselves to deal with disasters. To train volunteer workers in first-aid. To install early warning systems and build shelters. To promote the adoption of national emergency plans. To co-ordinate international aid more effectively. To call for international humanitarian law to be respected — since violations of this law cause so many disasters, particularly for the civilian casualties of war.

United against disasters, we can and we must do more — and better. But we must also tackle the causes of so much misery and suffering.

As always, the more vulnerable — the poorest: women, children, the elderly and the handicapped — are among the first to be most seriously affected.

The fight against disasters is therefore inseparable from the fight against the forgotten calamities, the "silent wars", such as poverty, the forced exodus of entire populations, the deterioration of the environment. These cause death and render the poor even poorer and more vulnerable.

Present throughout the world in the midst of such tragedies, the International Red Cross and Red Crescent Movement is duty bound to sound the alarm and call for action in the name of Humanity.

Millions of human lives can be saved, and suffering avoided, if appropriate measures are taken in time and adequate means committed — and if there is respect for humanitarian principles and rules.

In the name of Humanity, the International Red Cross and Red Crescent Movement calls upon the citizens of all countries and their governments:

To respect, and ensure respect for, human life and dignity everywhere in the world, and to act accordingly.

"Let us all unite against disasters!"

Note: This message has been recorded by:

Mr. Cornelio Sommaruga, President of the International Committee of the Red Cross (speaking in *French, German and Italian*);

Dr. Mario Villaruel Lander, President of the International Federation of Red Cross and Red Crescent Societies (speaking in *Spanish*);

Mr. Pär Stenbäck, Secretary General of the International Federation of Red Cross and Red Crescent Societies (speaking in *English*);

Dr. Ahmad Abu-Goura, Chairman of the Standing Commission of the Red Cross and Red Crescent (speaking in *Arabic*).

The recording (on 7 1/2 reel tape or cassette) can be obtained from the Press Division of the International Committee of the Red Cross.

MEETINGS IN CORDOBA

(5-10 May 1992)

● Commission on the Red Cross, Red Crescent and Peace

The Commission convened on 5 May in Cordoba in the course of the statutory meetings of the International Federation of Red Cross and Red Crescent Societies.

Headed by Mr. Claudio Caratsch, Vice-Chairman, the ICRC delegation consisted of Mrs. Renée Guisan, member of the ICRC, and Mr. Olivier Dürr, Head of the Division for Principles and Relations with the Movement.

The Commission, chaired by Mr. Maurice Aubert, met with its new membership and in line with its new mandate as adopted by the Council of Delegates in Budapest (November 1991).¹

Invited to give their opinion on the Commission's role, tasks and working methods, the members began by exchanging views on the subjects they would like to see addressed during their work. Two complementary options emerged during the discussions: (a) to continue to carry out studies and develop guidelines in the areas defined by the Council of Delegates in its Resolution 3 adopted in Budapest² and (b) to implement a concrete programme of action.

● Executive Council of the International Federation of Red Cross and Red Crescent Societies

The Federation's Executive Council held its 29th session on 6 and 7 May in Cordoba. One of the main items on the agenda was the appointment of the next Secretary General of the Federation, to replace Mr. Pär Stenbäck who currently holds this post and will resign as of 31 August 1992. During the session, Mr. Stenbäck reported on his four years of work as head of the Secretariat.

Amongst the other points discussed was an update of the Federation's

¹ In this connection see *IRRC*, No. 286, January-February 1992, pp. 26-28 and 45-48.

² *Ibid.*, pp. 46-47.

Strategic Work Plan for the 1990s and preparations for regional conferences scheduled for 1992 in Europe, Africa and Asia.

● **Second meeting of the members of the Federation's Executive Council and of the ICRC Assembly ("Yverdon II")**

On 31 August and 1 September 1991 members of the Federation's Executive Council and of the ICRC Assembly met in Yverdon les Bains, Switzerland, to consider measures to promote confidence-building amongst components of the Movement, to consolidate their activities and to enhance the image of the Red Cross and Red Crescent in the face of current challenges.³ A second meeting of this kind took place in Cordoba on 9 and 10 May after the session of the Federation's Executive Council.

The ICRC delegation, headed by Mr. Cornelio Sommaruga, President, consisted of Mr. Pierre Keller, Vice-President, ten members of the Committee and three from the Executive Board and the administration.

Three groups each considered one of the following themes:

- What is the specific identity of the International Red Cross and Red Crescent Movement and its components in an economically, politically and socially changing environment?
- Are the Movement's current governing and operational structures adequate for it to fulfil its humanitarian mandates effectively?
- In the framework of increasingly strong competition in the humanitarian field of endeavour, how can the Movement keep or acquire adequate human and financial resources?

The reports of the three groups were discussed in plenary; they will be sent in their final form to each National Society.

Their conclusions may be summarized as follows:

- With the current political, economic and social upheavals, it is absolutely necessary to coordinate international humanitarian operations more effectively with the UN agencies while at the same time maintaining the autonomy of the Movement's components and respect for the Fundamental Principles.
- In the same context, the Movement is increasingly likely to face a "humanitarian deficit" and will have to strengthen its image in order to remain financially afloat and meet requirements. This image can be enhanced by giving the public and donors a clearer idea of how much the

³ *Ibid.*, p. 25. See the report presented to the Council of Delegates by Mr. Pierre Keller, a member of the ICRC, in this connection.

Movement achieves in its humanitarian activities and the spirit in which it works.

- Not only do the Fundamental Principles point to the different image that has to be put across, they are the driving force of the Movement and the source of its cohesion, and each of its components must promote and respect them. One of these principles, universality, enjoins the Red Cross and Red Crescent Societies to help each other, and it is essential that greater support be given to emerging and/or weaker Societies and that collective measures be taken *vis-à-vis* Societies whose leaders cannot or will not act in conformity with the Fundamental Principles.
- The principle of voluntary service was particularly stressed, for volunteers are vital to the Movement. Hence they must be restored to their due place and given supervision and training in line with their expectations, thereby enabling them to give of their best.

This meeting confirms the particular value of such gatherings for the components of the Movement to exchange views in an open-minded and constructive spirit, which will henceforth be known as “the spirit of Yverdon”.

Lastly, the Study Group on the future of the International Red Cross and Red Crescent Movement set up by the Council of Delegates at its session in Budapest convened for the first time on 9 May in Cordoba. Its members were invited to participate in the “Yverdon II” discussions, which provided them with much food for thought.

ICRC and OAU sign cooperation agreement

The International Committee of the Red Cross (ICRC) and the Organization of African Unity (OAU) signed a cooperation agreement at ICRC headquarters in Geneva on 4 May 1992.

The agreement authorizes the ICRC to participate in OAU meetings as an observer and formalizes the long-standing cooperation between the two bodies. The official document was signed by ICRC President Cornelio Sommaruga and OAU Secretary General Salim Ahmed Salim in the presence of top officials from both organizations.

In his welcoming address, Mr Sommaruga said the agreement confirmed and would enhance cooperation between the ICRC and the OAU, particularly at a time when the OAU was increasingly involved in peace efforts in Africa. He said it should also enable the ICRC to step up efforts to ensure Africans are treated with dignity even in conflict situations. "The OAU is working for peace and the ICRC is convinced that its humanitarian action is also a contribution to peace", he stated.

Mr Salim said he appreciated and admired the ICRC's work not only in Africa but all over the world. He underlined that the agreement testified to the recognition by all African countries of the important role played by the ICRC.

The signing of the agreement was followed by a meeting between ICRC and OAU delegations led respectively by the ICRC President and the OAU Secretary General. An overview of ICRC operations on the African continent was given, with discussions focusing on the situations in Liberia, Mozambique, South Africa, Sudan and Western Sahara.

Both delegations were particularly concerned about the tragic situation in Somalia. While expressing his appreciation for the ICRC's aid efforts in the country, Mr Salim agreed that they were not sufficient to avoid a catastrophe and that a major involvement of the international community was essential. The two organizations will continue to use all possible means to achieve this goal.

The First East Asia Military Seminar on the Law of War

(Singapore, 23-27 March 1992)

The first military seminar on international humanitarian law (IHL) for the countries of East Asia was held in Singapore from 23 to 27 March 1992. It was attended by 25 generals and high-ranking officers representing eleven countries,* and was organized by the ICRC in close cooperation with the Singapore Red Cross Society.

The purpose of the seminar was to promote systematic and coordinated instruction in IHL within the armed forces of the countries present and, by encouraging an exchange of views and experience between officers from within the same region, to foster close cooperation in such instruction both between those States and between the services responsible for giving it. A further objective was to encourage all the countries in the region to join in centralized courses, especially those arranged by the International Institute of Humanitarian Law in San Remo and, together with the ICRC, to create "pools" of IHL instructors.

The ICRC was represented by Mr. René Kosirnik, head of the Legal and Cooperation-Dissemination Divisions, Mr. Bruno Doppler, coordinator of dissemination for the armed forces, Mr. Christophe Swinarski, former head of the Hong Kong delegation, Mr. Peter Küng, his successor, and Mr. Pierre Pont, head of the Jakarta delegation. The Singapore Red Cross was represented by Mr. Ho Wah Onn, legal adviser, and Professor L.R. Penna of the University of Singapore.

The seminar, which was directed by Mr. Doppler, took the form of lectures and discussions and dealt with various aspects of IHL. The participants' positive assessment at the end of the meeting holds out promising prospects for the development of dissemination in this region and, in particular, for the organization of national seminars.

Alongside the seminar, Mr. Kosirnik was able to meet the Attorney-General of Singapore, Mr. Tan Boon Teik, and the Director of Legal Services at the Ministry of Defence, Mr. Jeffrey Chan Wah Teck. Discussions centred on the question of Singapore's ratification of the Protocols additional to the Geneva Conventions and on other matters of common interest, including a forthcoming study visit to

* Brunei, Democratic People's Republic of Korea, Indonesia, Japan, Malaysia, Philippines, Republic of Korea, Singapore, Taiwan, Thailand, Viet Nam.

ICRC headquarters, the International Federation of Red Cross and Red Crescent Societies and the Swiss Red Cross by a delegation from the Singapore Ministry of Defence. Mr. Kosirnik, together with Mr. Pont, also met the leaders of the Singapore Red Cross.

Declaration of succession of the Republic of Slovenia to the Geneva Conventions and their Additional Protocols

On 26 March 1992, the Republic of Slovenia deposited with the Swiss Government a declaration of succession, without reservations, to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols of 8 June 1977. These instruments were already applicable to the territory of Slovenia by virtue of their ratification by the Socialist Federal Republic of Yugoslavia on 21 April 1950 and 11 June 1979 respectively.

In accordance with international practice, the entry into force in Slovenia of the four Conventions and the two Protocols is retroactive to 25 June 1991, the date of the Republic's independence.

The Republic of Slovenia is the **169th** State to become party to the Geneva Conventions. It is the **109th** State party to Protocol I and the **99th** to Protocol II.

The instrument of succession was accompanied by a declaration regarding the recognition by Slovenia of the competence of the International Fact-Finding Commission, under Article 90 of Protocol I. The Republic of Slovenia is the **27th** State to make the declaration concerning the Commission.

Accession to the Protocols by the Federative Republic of Brazil

The Federative Republic of Brazil acceded on 5 May 1992 to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Federative Republic of Brazil on 5 November 1992.

This accession brings to **110** the number of States party to Protocol I and to **100** those party to Protocol II.

The Democratic Republic of Madagascar ratifies the Protocols

The Democratic Republic of Madagascar ratified on 8 May 1992 the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Democratic Republic of Madagascar on 8 November 1992.

This ratification brings to **111** the number of States party to Protocol I and to **101** those party to Protocol II.

Declaration of succession of the Republic of Croatia to the Geneva Conventions and their Additional Protocols

On 11 May 1992, the Republic of Croatia deposited with the Swiss Government a declaration of succession, without reservations, to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols of 8 June 1977. These instruments were already applicable to the territory of Croatia by virtue of their ratification by the Socialist Federal Republic of Yugoslavia on 21 April 1950 and 11 June 1979 respectively.

In accordance with international practice, the four Conventions and the two Protocols came into force for Croatia retroactively on 8 October 1991, the date of the Republic's independence.

The Republic of Croatia is the **170th** State to become party to the Geneva Conventions. It is the **112th** State party to Protocol I and the **102nd** to Protocol II.

The instrument of succession was accompanied by a declaration regarding Croatia's recognition of the competence of the International Fact-Finding Commission, under Article 90 of Protocol I. The Republic of Croatia is the **28th** State to make the declaration concerning the Commission.

Death of Professor Gejza Mencer

The ICRC was deeply saddened to learn of the death recently, at age 83, of Professor Gejza Mencer, a member of the Czechoslovak Red Cross Federal Committee and an expert of world renown on international humanitarian law.

Gejza Mencer was a university professor of public international law, a member of the Czechoslovak Academy of Sciences, and Chairman of the National Society's Sub-Commission on International Humanitarian Law. He devoted much of his life to the development

and dissemination of international humanitarian law and Red Cross principles and ideals, both nationally and internationally, and from 1979 to 1981 was Vice-Chairman of the joint ICRC/League of Red Cross Societies Working Group in that field. He was one of the National Society's delegates to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1974-1977), and represented it at many International Red Cross and Red Crescent meetings between 1973 and 1986. He lectured at numerous foreign universities and was the author of a number of books and studies on the Protocols additional to the Geneva Conventions, public international law and international protection of the environment.

Thanks to his keen mind and outgoing nature, Professor Mencer was able to communicate to students his passion for humanitarian law and action. He was held in high esteem in Czechoslovakia and abroad for his professional competence, his warm personality and his talents as a speaker.

Professor Mencer was awarded the Henry Dunant Medal in 1989 in recognition of his dedication to the Red Cross mission of protecting the individual in time of armed conflict.

The ICRC will remember Professor Mencer with continuing gratitude as a great champion of the humanitarian cause.

Professor Hamed Sultan

It is with deep sorrow that we learned of the death in Cairo in early March of Professor Hamed Sultan.

A well-known personality in the International Red Cross and Red Crescent Movement and in international circles in general, Professor Sultan led the Egyptian delegation to the 1971-1972 Conference of government experts and to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1974-1977), where he was elected Chairman of Committee III. He soon emerged as a leading figure at the Conference, and played a key role in bringing it to a successful conclusion. In the words of Ambassador George Aldrich, head of the United States

delegation to the Conference, rapporteur for Committee III and current holder of the Chair of International Humanitarian Law at the University of Leiden, "Professor Sultan, as Chairman of the Committee, was a tower of strength and wisdom who ensured that the results of delicate and protracted negotiations were firmly cemented into the text as soon as the moment was right".¹

Professor Sultan also took a keen interest in the academic side of humanitarian law. For example, he participated in several of the annual Round Table sessions of the International Institute of Humanitarian Law in San Remo (where he chaired the discussions in 1974 and 1975), and one of his last publications was his contribution, entitled "The Islamic Concept", to the UNESCO Manual of international humanitarian law.²

But this was only one aspect of a rich and varied career that spanned more than half a century in the service of international law, of humanitarian standards and of Egypt, which he saw and cherished as the country that had brought the most universal and enduring values to the world.

Professor Sultan was born in 1912. After highly successful law studies at Cairo University he began teaching at the same Faculty of Law in 1934. His thesis on neutrality, just before the outbreak of the Second World War, drew wide attention. In 1948 he became head of the International Law Department, where he remained until his retirement in 1977. Thus for well over three decades (and even following his retirement he continued to teach and supervise theses) he trained successive generations of international lawyers from all over the Arab world who came to complete their studies in Egypt. To his students, he was a Master in the full sense of the word, leaving a deep impression on them by his eloquence, his intelligence and his personal example.

Professor Sultan published a wide range of academic works, the best-known being his treatise on international law — still the main Arabic reference work on the subject — and his book on international law in Islam.

¹ George H. Aldrich, "Some reflections on the origins of the 1977 Geneva Protocols", in *Studies and Essays on International Humanitarian Law and Red Cross Principles*, Christophe Swinarski, ed., ICRC, Martinus Nijhoff Publishers, Geneva, The Hague, 1984, p. 134.

² *International Dimensions of Humanitarian Law*, Henry Dunant Institute, UNESCO, Martinus Nijhoff Publishers, Dordrecht, Boston and London, 1988, pp. 29-39.

In addition to his academic career, Professor Sultan was equally busy as a practitioner of international law. He liked to say that he had served Egypt under (and possibly in spite of) its many regimes. He became an adviser to the Egyptian government in 1944, he was legal adviser to the Egyptian delegation to the UN Security Council when the latter was considering Egypt's complaint against the United Kingdom in 1947, and he was a member of the Egyptian delegation to the UN General Assembly from 1946 to 1953. He was also adviser to the Egyptian delegation in the negotiations with the United Kingdom that led to the 1953 agreement on Sudan.

At the same time he served as judge and counsel, presiding over the prize court in Alexandria from its inception in 1949 until 1973. In 1950 he was elected by the General Assembly to be a judge on the UN Administrative Tribunal, a post he held until 1953; he represented the Saudi government in the famous ARAMCO arbitration case (1954-1957) and was much in demand by governments to act as an arbitrator, for example in the case between Kuwait and AMINOIL in 1983 and between Egypt and Israel over Taba in 1988.

Beyond his very long and distinguished academic and professional career in public service at the national and international levels, and his countless accomplishments and distinctions, the most abiding memory of Hamed Sultan is that of the man.³

Professor Sultan was a warm, generous and courteous man who displayed consummate elegance of thought, speech and conduct. With his receptive mind, he sought not what divided people but what they had in common. He was a wonderful listener, knew how to win people's confidence and how to put himself in their place. But he was also a skilled negotiator and a man of principle who never shrank from expressing moral indignation despite the great personal risk that he sometimes took in so doing.

A man of immense culture, both Arab and Western, Professor Sultan was proud of his Egyptian, Arab and Muslim identity, not in a way that opposed or excluded others but in a way that recognized the universal values that underpin all civilization and the contribution that his own culture had made to that civilization.

³ The author was privileged to know Hamed Sultan for over four decades, beginning when he first attended Professor Sultan's introductory course on international law at Cairo University in the early 1950s. He would like to stress Hamed Sultan's absolute loyalty and proverbial devotion to his friends, including his former students whom he thought of as the children he never had.

It is this memory of an exceptional man, who combined a strong feeling of cultural identity with a genuine commitment to universality, gracefully and without contradiction, that will remain with us and will hopefully continue to serve as an example.

Georges Abi-Saab

ON HUMANITARIAN ASSISTANCE

During the past few years much has been written on the various aspects — legal, political, social and media-related — of humanitarian assistance. To supplement the articles published in this issue of the *Review*, we are presenting two recent books by two eminent French doctors. Both of them have devoted long years to the humanitarian cause, but the conclusions they draw from their personal experience are often conflicting.¹

According to Bernard Kouchner, one of the founders of *Médecins sans frontières* (MSF) and currently France's Minister for Health and Humanitarian Action, it was the experience of French doctors working in many parts of the world to help people stricken by war or natural disasters that led the French government to propose to the United Nations General Assembly the "right to humanitarian assistance". That proposal led to the adoption of resolutions 43/131 of 8 December 1988 and 45/100 of 14 December 1990 by the Assembly and of resolution 688 of 5 April 1991 by the Security Council.

Dr. Kouchner affirms that MSF's work in behalf of Iraqi Kurds was exemplary in that it was carried out on the basis of the "*droit d'ingérence humanitaire*" proposed by the French government. The author is convinced, in fact, that media coverage — and TV coverage in particular — of the plight of Iraqi Kurds in 1991 rallied public opinion and put considerable pressure on governments, forcing them finally to intervene.

Looking back over MSF's twenty years of activity, Xavier Emmanuelli, also a founding member of MSF and its Honorary President, concludes that the organization has attained a high degree of professionalism which enables it to handle even the most difficult situations.

In the course of his missions Dr. Emmanuelli had to deal with a great many of what he calls the "vultures of humanitarian work", namely the media and politicians who use humanitarian activities for their own ends. When during the Gulf war he managed to get to the Turkish-Iraqi border with an MSF team, he was deeply shocked to see just how much equipment the media had brought to the spot, especially TV networks, which were broadcasting live the tragedy of the Kurdish people while the Coalition forces simply dropped

¹ Bernard Kouchner, *Le malheur des autres* (The misfortune of others), Editions Odile Jacob, Paris, 1991, 339 pp. and Xavier Emmanuelli, *Les prédateurs de l'action humanitaire* (Vultures of humanitarian work), Editions Albin Michel, Paris, 1991, 250 pp.

relief supplies on refugee camps without even worrying about the damage they were causing.

One of the central arguments of Dr. Emmanuelli's book is that politics represents a real danger when allowed to interfere with humanitarian activities; Bernard Kouchner, on the other hand, maintains that the media should be used to mobilize public opinion, which will then put pressure on governments and force recalcitrant States to let humanitarian assistance reach all the victims.

Despite their differences, both authors feel that it is their duty to denounce publicly any breaches of international law observed during their missions; they are consequently critical of the ICRC which, as a rule, maintains a policy of confidentiality.

In this regard, here is what ICRC President Cornelio Sommaruga had to say about the institution's policy of confidentiality in an article published in the magazine of the Spanish Red Cross in March 1990.²

"Let us take an example: an ICRC delegate finds that international humanitarian law, which it is the ICRC's duty to uphold, is being violated. His first reaction might be to express his legitimate indignation to the first journalist he sees. That may ease his conscience, but what are the likely consequences? The authority that opened the doors of its prisons to the ICRC would probably waste no time in pulling them shut once again. This does not mean that public opinion has no role to play in bringing about a change in the attitude of authorities not known for their compliance with international humanitarian law. Other humanitarian organizations and journalists can perfectly well make their findings public, but for the ICRC such a step can be taken only as a last resort, after careful consideration and in accordance with precise criteria. (...)

Indeed, the ICRC takes a public stand on breaches of international humanitarian law only if they are serious and repeated and if its own confidential approaches have not succeeded in putting a stop to them. In addition, the violations must be witnessed by its delegates or be common knowledge. When the ICRC is making its decision the interests of the people affected or threatened by such violations override all other considerations. In serious cases, therefore, the ICRC can abandon its traditional policy of discretion and call on the States party to the Geneva Conventions to urge the State guilty of such breaches to put an end to them.

(...)

Heart and mind are sometimes at odds: when a man of action witnesses a violation of international humanitarian law, the indignation this arouses in him may prompt him to act in a certain way, but if he stops to think he may see things differently. Every single person who has ever worked for the Red Cross has been faced with this dilemma at one time or another. To speak or not to speak? With very few exceptions, for 126 years ICRC staff have most

² Cruz Roja, March 1990, pp. 6-7.

often chosen to keep silent. In their heart of hearts they know that silence, although a heavy burden to bear, is the best way, the one that will open the doors behind which suffering, solitude and misery are often to be found."

Françoise Perret

INTERNATIONAL HUMANITARIAN LAW IN THE CONTEMPORARY WORLD

*From traditional humanitarian law
to expanded humanitarian law*

Established more than twenty years ago to promote the dissemination and development of international humanitarian law and to work at all levels for its implementation, during this time the International Institute of Humanitarian Law has become — thanks to congresses, round tables, meetings of experts and training courses — a genuine humanitarian forum fostering ongoing dialogue between representatives of States, international, intergovernmental and non-governmental organizations, academic institutions and many leading figures interested in humanitarian problems.³

This booklet by Jovica Patrnogić, former President of the Institute, and Boško Jakovljević, an expert in humanitarian law,⁴ is fully in line with the Institute's objectives and methods which are to make an up-to-date assessment of humanitarian law (including human rights law and refugee law), stress its merits, expose its weaknesses and examine ways of developing it in accordance with the realities of the present-day world so as to ensure the best possible protection for the ever-increasing number of victims of calamities in our time. To achieve this, the authors decided to "provoke" — in the best sense of the term — the reader into reacting to the ideas, initiatives and suggestions which are interspersed throughout the booklet.

The authors begin by tracing the origin of humanitarian law as positive law. They describe how it evolved since 1864 and highlight the main features of the Geneva Conventions and their Additional Protocols, together with the

³ In this connection see "Working for a humanitarian dialogue — the International Institute of Humanitarian Law celebrates its twentieth anniversary", *IRRC*, No. 278, September-October 1990, pp. 450-455.

⁴ Jovica Patrnogić & Boško Jakovljević, *International Humanitarian Law in the Contemporary World*, International Institute of Humanitarian Law, San Remo, 1991, 64 pp. (Collection of publications — No. 10) (in English).

principles underlying the provisions of these treaties. They then go on to stress the efforts of the international community and institutions such as the International Red Cross and Red Crescent Movement progressively to develop this law.

After noting that many situations, such as internal disturbances and tension and the position of political detainees, still often elude legal definition, the authors advocate that what they term "traditional international humanitarian law" be gradually adapted to cover the numerous categories of victims of disaster, whether man-made or not, pointing out that the scope of international humanitarian law must henceforth be expanded so that in accordance with the principle of humanity, *all* who suffer are protected.

The authors are aware that the complexity of conflicts, disturbances and situations of tension, as well as the great variety in categories of victims, lead to disparities in terms of protection, if only because refugees, displaced persons, separated families, and victims of torture and violence come within the purview of different legal systems and especially of human rights law.

A useful outline is accordingly given of the main features of international humanitarian law and international human rights law and the views of the various schools of thought on the relationship between the two systems. First there is the integrationist theory, according to which the two systems are merged; secondly, there is the separatist theory which considers that the two systems are different and independent; thirdly, there is the complementarist theory according to which the two systems are distinct but complement each other. Patmogić and Jakovljević seem to incline towards the latter theory. They stress the independence of humanitarian law (although, in their view, this independence is less evident in the case of internal conflicts); it is based upon the principle of neutrality — a characteristic which clearly is not shared by human rights law, as this is influenced by political factors.

The authors then go on to examine the complementarity of the two systems, making a comparative analysis of traditional humanitarian law, human rights law and refugee law to demonstrate how and to what extent they regulate such fundamental human rights as the right to life, the right to health, social rights, the protection of the family, and the right to humanitarian assistance.

Proceeding from this analysis, the authors single out the criteria which they would use to determine humanitarian law in the broader sense. This law would include the most fundamental human rights, those which ensure the human being's elementary needs and thus his or her survival, but also those which guarantee that he or she can enjoy the aforesaid rights. Its field of application would be extended to include emergency and, to use the authors' term, extraordinary situations (international and non-international armed conflicts, disturbances, tension, riots and other acts of violence). It would also cover displaced persons, detainees and anyone in a vulnerable position. To what extent would this expanded humanitarian law be applicable to natural disasters? Although the authors are not explicit on this point they do stress

that the basic right to survival and security must be ensured *in all circumstances*.

As the authors themselves indeed recognize, it is no easy task to define the exact boundaries between traditional humanitarian law, expanded humanitarian law and human rights law. However, the three systems do contain basic humanitarian principles which are common to them all and it would be interesting to set them down in the form of a declaration or statement of guiding principles.

Lastly, an attempt should be made to harmonize the provisions of these various legal systems and to ensure that they are applied simultaneously. To this end, the authors recommend several things that could be done:

1. study the legal instruments belonging to traditional humanitarian law, human rights instruments and humanitarian law in a broad sense and make efforts to eliminate contradictions;
2. study measures to implement each of the three systems so as to avoid duplication and make them applicable simultaneously to all situations;
3. elaborate additional rules, where necessary, to specify, by developing the law appropriately, the duties corresponding to each of these rights, these duties falling on the authorities, the organizations concerned and individuals;
4. develop and reinforce collaboration of the institutions concerned in the application of international instruments;
5. introduce an obligatory system for disseminating humanitarian rules, as it exists for international humanitarian law applicable in armed conflicts, and to intensify promotion measures through teaching and training;
6. include in this action intergovernmental — and in particular non-governmental — organizations which are concerned with humanitarian problems.

Jacques Meurant

COUNTER-MEASURES IN PUBLIC INTERNATIONAL LAW

Dr. Zouhair Al-Hassani's work on counter-measures in public international law* is innovative both in subject and content. It is also, to our knowledge, unique among Arab legal works. In addition to the introduction and conclu-

* Zouhair Al-Hassani, *Counter-measures in public international law*, University of Garyounes, Damascus, 1988, 229 pp. (in Arabic).

sion, it comprises two parts. The introduction discusses the purpose of the study, defines various concepts in relation to the subject and provides a general outline. The first part contains an analysis of counter-measures in accordance with the "general rules of public international law in the context of decentralized international relations" and the second part discusses "counter-measures provided by the United Nations in the area of international relations".

As indicated in the title, the concept of counter-measures is closely linked with the issue of international responsibility, an issue which the International Law Commission has been studying for several decades with a view to drafting a convention. The Commission is not alone in taking an interest in international responsibility, since this has long been the subject of in-depth studies by numerous experts in the field of international law. Dr. Al-Hassani's work constitutes a noteworthy contribution to this effort and fills a considerable lacuna in Arab legal texts. In particular, it discusses the work of the International Law Commission and reviews the decisions of international law relating to counter-measures, and the practice of States and of the United Nations with respect to these measures.

The author also examines other types of measures taken in response to violations of international obligations, with particular reference to "one aspect of the legal consequences to which breaches of international law give rise, but which do not entail international responsibility", and thereby sheds considerable light on the meaning and purpose of the counter-measures themselves.

Dr. Al-Hassani goes on to define counter-measures as "the measures that apply in the event of non-compliance by a State with its international obligations towards another State". These are peaceful measures, which serve two purposes. First of all, they fill a gap created by the lack of an international judicial authority and act as sanctions against those who act illegally. Secondly, they aim to obtain satisfaction from the party that has failed to fulfil its basic obligations. Counter-measures may be exercised individually (for example, a State may suspend its delivery of food or weapons to a State that has failed to fulfil its international obligations, or freeze that State's assets within its own territory) or collectively (in application of a decision taken by a group of States or an international organization, for example to impose a boycott, suspend trade relations or cancel programmes for the transfer of technology).

However, although a number of parties (the plaintiff or defendant, the UN General Assembly or Security Council, regional organizations) have the right to exercise counter-measures, the actual ability of States to do so varies and it is consequently often difficult to obtain tangible results.

In addition to discussing the work of the International Law Commission and various legal points and decisions, the author proposes that the Statute of the International Court of Justice be revised to include a legal basis, as defined by treaty law, for the punishment of offences against international law. He also proposes that a penal chamber, whose jurisdiction would be limited to penal offences, be formed within the Court.

However, these proposals appear somewhat unrealistic in view of the current world situation, on the one hand, and the very nature of international law, on the other hand.

The author also mentions the emergence of “*sui generis* counter-measures” exercised by States or their bodies, whatever their importance or interests, and sometimes even by other groups or individuals. Such “measures”, which have no basis in international law and exceed its scope, are clearly unlawful.

Dr. Al-Hassani also makes frequent mention of armed conflicts and recourse to force and discusses, in this context, the possible application of counter-measures as regards the belligerents themselves or third parties, or in the event of occupation. In this connection, he points out the relevant provisions of the Fourth Geneva Convention and Additional Protocol I of 1977.

An updated version of this excellent work would be most welcome, especially if it took into account various aspects of the recent Gulf war, such as the relevant Security Council resolutions and the many implications of the conflict.

Ameur Zemmali

ADDRESSES OF NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

- AFGHANISTAN (Democratic Republic of) — Afghan Red Crescent Society, Puli Hartan, *Kabul*.
- ALBANIA (Republic of) — Albanian Red Cross, Rue Qamil Guranjaku No. 2, *Tirana*.
- ALGERIA (People's Democratic Republic of) — Algerian Red Crescent, 15 bis, boulevard Mohamed V, *Algiers*.
- ANGOLA — Angola Red Cross, Av. Hoji Ya Henda 107, 2. andar, *Luanda*.
- ARGENTINA — The Argentine Red Cross, H. Yrigoyen 2068, 1089 *Buenos Aires*.
- AUSTRALIA — Australian Red Cross Society, 206, Clarendon Street, *East Melbourne 3002*.
- AUSTRIA — Austrian Red Cross, Wiedner Hauptstrasse 32, Postfach 39, A-1041, *Vienna 4*.
- BAHAMAS — The Bahamas Red Cross Society, P.O. Box N-8331, *Nassau*.
- BAHRAIN — Bahrain Red Crescent Society, P.O. Box 882, *Manama*.
- BANGLADESH — Bangladesh Red Crescent Society, 684-686, Bara Magh Bazar, Dhaka-1217, G.P.O. Box No. 579, *Dhaka*.
- BARBADOS — The Barbados Red Cross Society, Red Cross House, Jemmotts Lane, *Bridgetown*.
- BELGIUM — Belgian Red Cross, 98, chaussée de Vleurgat, 1050 *Brussels*.
- BELIZE — Belize Red Cross Society, P.O. Box 413, *Belize City*.
- BENIN (Republic of) — Red Cross of Benin, B.P. No. 1, *Porto-Novo*.
- BOLIVIA — Bolivian Red Cross, Avenida Simón Bolívar, 1515, *La Paz*.
- BOTSWANA — Botswana Red Cross Society, 135 Independence Avenue, P.O. Box 485, *Gaborone*.
- BRAZIL — Brazilian Red Cross, Praça Cruz Vermelha No. 10-12, *Rio de Janeiro*.
- BULGARIA — Bulgarian Red Cross, 1, Boul. Biruzov, 1527 *Sofia*.
- BURKINA FASO — Burkina Be Red Cross Society, B.P. 340, *Ouagadougou*.
- BURUNDI — Burundi Red Cross, rue du Marché 3, P.O. Box 324, *Bujumbura*.
- CAMEROON — Cameroon Red Cross Society, rue Henri-Dunant, P.O.B 631, *Yaoundé*.
- CANADA — The Canadian Red Cross Society, 1800 Alta Vista Drive, *Ottawa, Ontario K1G 4J5*.
- CAPE VERDE (Republic of) — Red Cross of Cape Verde, Rua Unidade-Guiné-Cabo Verde, P.O. Box 119, *Praia*.
- CENTRAL AFRICAN REPUBLIC — Central African Red Cross Society, B.P. 1428, *Bangui*.
- CHAD — Red Cross of Chad, B.P. 449, *N' Djamena*.
- CHILE — Chilean Red Cross, Avenida Santa Maria No. 0150, Correo 21, Casilla 246-V., *Santiago de Chile*.
- CHINA (People's Republic of) — Red Cross Society of China, 53, Ganmien Hutong, *Beijing*.
- COLOMBIA — Colombian Red Cross Society, Avenida 68, No. 66-31, Apartado Aéreo 11-10, *Bogotá D.E.*
- CONGO (People's Republic of the) — Congolese Red Cross, place de la Paix, B.P. 4145, *Brazzaville*.
- COSTA RICA — Costa Rica Red Cross, Calle 14, Avenida 8, Apartado 1025, *San José*.
- CÔTE D'IVOIRE — Red Cross Society of Côte d'Ivoire, B.P. 1244, *Abidjan*.
- CUBA — Cuban Red Cross, Calle Prado 206, Colón y Trocadero, *Habana 1*.
- THE CZECH AND SLOVAK FEDERAL REPUBLIC — Czechoslovak Red Cross, Thunovská 18, 118 04 *Prague 1*.
- DENMARK — Danish Red Cross, Dag Hammarskjølds Allé 28, Postboks 2600, 2100 *København Ø*.
- DJIBOUTI — Red Crescent Society of Djibouti, B.P. 8, *Djibouti*.
- DOMINICA — Dominica Red Cross Society, P.O. Box 59, *Roseau*.
- DOMINICAN REPUBLIC — Dominican Red Cross, Apartado postal 1293, *Santo Domingo*.
- ECUADOR — Ecuadorean Red Cross, calle de la Cruz Roja y Avenida Colombia, *Quito*.
- EGYPT (Arab Republic of) — Egyptian Red Crescent Society, 29, El Galaa Street, *Cairo*.
- EL SALVADOR — Salvadorean Red Cross Society, 17C. Pte y Av. Henri Dunant, *San Salvador*, Apartado Postal 2672.
- ETHIOPIA — Ethiopian Red Cross Society, Ras Desta Damtew Avenue, *Addis Ababa*.
- FIJI — Fiji Red Cross Society, 22 Gorrie Street, P.O. Box 569, *Suva*.
- FINLAND — Finnish Red Cross, Tehtaankatu, 1 A. Box 168, 00141 *Helsinki 14/15*.
- FRANCE — French Red Cross, 1, place Henry-Dunant, F-75384 *Paris*, CEDEX 08.
- GAMBIA — The Gambia Red Cross Society, P.O. Box 472, *Banjul*.
- GERMANY — German Red Cross, Friedrich-Erbert-Allee 71, 5300, *Bonn 1*, Postfach 1460 (D.B.R.).
- GHANA — Ghana Red Cross Society, National Headquarters, Ministries Annex A3, P.O. Box 835, *Accra*.
- GREECE — Hellenic Red Cross, rue Lycavittou, 1, *Athens 10672*.
- GRENADA — Grenada Red Cross Society, P.O. Box 221, *St George's*.
- GUATEMALA — Guatemalan Red Cross, 3.^a Calle 8-40, Zona 1, *Ciudad de Guatemala*.
- GUINEA — Red Cross Society of Guinea, P.O. Box 376, *Conakry*.
- GUINEA-BISSAU — Red Cross Society of Guinea-Bissau, rua Justino Lopes N.º 22-B, *Bissau*.
- GUYANA — The Guyana Red Cross Society, P.O. Box 10524, Eve Leary, *Georgetown*.
- HAITI — Haitian National Red Cross Society, place des Nations Unies, (Bicentenaire), B.P. 1337, *Port-au-Prince*.
- HONDURAS — Honduran Red Cross, 7.^a Calle, 1.^a y 2.^a Avenidas, *Comayagüela D.M.*

- HUNGARY (The Republic of) — Hungarian Red Cross, V. Arany János utca, 31, *Budapest 1367*. Mail Add.: 1367 *Budapest 51*. Pf. 121.
- ICELAND — Icelandic Red Cross, Raudararstigur 18, 105 *Reykjavik*.
- INDIA — Indian Red Cross Society, 1, Red Cross Road, *New Delhi 110001*.
- INDONESIA — Indonesian Red Cross Society, II Jend Gatot subroto Kar. 96, Jakarta Selatan 12790, P.O. Box 2009, *Jakarta*.
- IRAN — The Red Crescent Society of the Islamic Republic of Iran, Avenue Ostad Nejatollahi, *Tehran*.
- IRAQ — Iraqi Red Crescent Society, Mu'ari Street, Mansour, *Baghdad*.
- IRELAND — Irish Red Cross Society, 16, Merrion Square, *Dublin 2*.
- ITALY — Italian Red Cross, 12, via Toscana, 00187 *Rome*.
- JAMAICA — The Jamaica Red Cross Society, 76, Arnold Road, *Kingston 5*.
- JAPAN — The Japanese Red Cross Society, I-3, Shiba-Daimon, I-chome, Minato-Ku, *Tokyo 105*.
- JORDAN — Jordan National Red Crescent Society, P.O. Box 10001, *Amman*.
- KENYA — Kenya Red Cross Society, P.O. Box 40712, *Nairobi*.
- KOREA (Democratic People's Republic of) — Red Cross Society of the Democratic People's Republic of Korea, Ryonhwa 1, Central District, *Pyongyang*.
- KOREA (Republic of) — The Republic of Korea National Red Cross, 32-3Ka, Nam San Dong, Choong-Ku, *Seoul 100-043*.
- KUWAIT — Kuwait Red Crescent Society, (provisional address) Al Salmiya, *Kuwait*.
- LAO PEOPLE'S DEMOCRATIC REPUBLIC — Lao Red Cross, B.P. 650, *Vientiane*.
- LATVIA — Latvian Red Cross Society, 28, Skolas Street, 226 300 *Riga*.
- LEBANON — Lebanese Red Cross, rue Spears, *Beirut*.
- LESOTHO — Lesotho Red Cross Society, P.O. Box 366, *Maseru 100*.
- LIBERIA — Liberian Red Cross Society, National Headquarters, 107 Lynch Street, 1000 *Monrovia 20*, West Africa.
- LIBYAN ARAB JAMAHIRIYA — Libyan Red Crescent, P.O. Box 541, *Benghazi*.
- LIECHTENSTEIN — Liechtenstein Red Cross, Heilighkreuz, 9490 *Vaduz*.
- LITHUANIA — Lithuanian Red Cross Society, Gedimino Ave 3a, 232 600 *Vilnius*.
- LUXEMBOURG — Luxembourg Red Cross, Parc de la Ville, B.P. 404, *Luxembourg 2*.
- MADAGASCAR — Malagasy Red Cross Society, 1, rue Patrice Lumumba, *Antananarivo*.
- MALAWI — Malawi Red Cross Society, Conforzi Road, P.O. Box 983, *Lilongwe*.
- MALAYSIA — Malaysian Red Crescent Society, JKR 32 Jalan Nipah, off Jalan Ampang, *Kuala Lumpur 55000*.
- MALI — Mali Red Cross, B.P. 280, *Bamako*.
- MAURITANIA — Mauritanian Red Crescent, B.P. 344, avenue Gamal Abdel Nasser, *Nouakchott*.
- MAURITIUS — Mauritius Red Cross Society, Ste Thérèse Street, *Curepipe*.
- MEXICO — Mexican Red Cross, Calle Luis Vives 200, Col. Polanco, *México 10*, Z.P. 11510.
- MONACO — Red Cross of Monaco, 27 boul. de Suisse, *Monte Carlo*.
- MONGOLIA — Red Cross Society of Mongolia, Central Post Office, Post Box 537, *Ulan Bator*.
- MOROCCO — Moroccan Red Crescent, B.P. 189, *Rabat*.
- MOZAMBIQUE — Mozambique Red Cross Society, Caixa Postal 2986, *Maputo*.
- MYANMAR (The Union of) — Myanmar Red Cross Society, 42, Strand Road, *Yangon*.
- NEPAL — Nepal Red Cross Society, Tahachal Kalimati, P.B. 217, *Kathmandu*.
- NETHERLANDS — The Netherlands Red Cross, P.O. Box 28120, 2502 *KC The Hague*.
- NEW ZEALAND — The New Zealand Red Cross Society, Red Cross House, 14 Hill Street, *Wellington 1* (P.O. Box 12-140, *Wellington Thorndon*).
- NICARAGUA — Nicaraguan Red Cross, Apartado 3279, *Managua D.N.*
- NIGER — Red Cross Society of Niger, B.P. 11386, *Niamey*.
- NIGERIA — Nigerian Red Cross Society, 11 Eko Akete Close, off St. Gregory's Rd., P.O. Box 764, *Lagos*.
- NORWAY — Norwegian Red Cross, P.O. Box 6875, St. Olavspl. N-0130 *Oslo 1*.
- PAKISTAN — Pakistan Red Crescent Society, National Headquarters, Sector H-8, *Islamabad*.
- PANAMA — Red Cross Society of Panama, Apartado Postal 668, *Panamá 1*.
- PAPUA NEW GUINEA — Papua New Guinea Red Cross Society, P.O. Box 6545, *Boroko*.
- PARAGUAY — Paraguayan Red Cross, Brasil 216, esq. José Berges, *Asunción*.
- PERU — Peruvian Red Cross, Av. Caminos del Inca y Av. Nazarenas, Urb. Las Gardenias — Surco — Lima (33) Apartado 1534, *Lima 100*.
- PHILIPPINES — The Philippine National Red Cross, Bonifacio Drive, Port Area, P.O. Box 280, *Manila 2803*.
- POLAND (The Republic of) — Polish Red Cross, Mokotowska 14, 00-950 *Warsaw*.
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- QATAR — Qatar Red Crescent Society, P.O. Box 5449, *Doha*.
- ROMANIA — Red Cross of Romania, Strada Biserica Amzei, 29, *Bucarest*.
- RWANDA — Rwandese Red Cross, B.P. 425, *Kigali*.
- SAINT LUCIA — Saint Lucia Red Cross, P.O. Box 271, *Castries St. Lucia, W. I.*
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- SIERRA LEONE — Sierra Leone Red Cross Society, 6, Liverpool Street, P.O.B. 427, *Freetown*.
- SINGAPORE — Singapore Red Cross Society, Red Cross House 15, Penang Lane, *Singapore 0923*.

- SOLOMON ISLANDS — The Solomon Islands Red Cross Society, P.O. Box 187, *Honiara*.
- SOMALIA (Democratic Republic of) — Somali Red Crescent Society, P.O. Box 937, *Mogadishu*.
- SOUTH AFRICA — The South African Red Cross Society, Essanby House 6th Floor, 175 Jeppe Street, P.O.B. 8726, *Johannesburg 2000*.
- SPAIN — Spanish Red Cross, Eduardo Dato, 16, *Madrid 28010*.
- SRI LANKA (Dem. Soc. Rep. of) — The Sri Lanka Red Cross Society, 106, Dharmapala Mawatha, *Colombo 7*.
- SUDAN (The Republic of the) — The Sudanese Red Crescent, P.O. Box 235, *Khartoum*.
- SURINAME — Suriname Red Cross, Gravenberchstraat 2, Postbus 2919, *Paramaribo*.
- SWAZILAND — Baphalali Swaziland Red Cross Society, P.O. Box 377, *Mbabane*.
- SWEDEN — Swedish Red Cross, Box 27 316, 102-54 *Stockholm*.
- SWITZERLAND — Swiss Red Cross, Rainmattstrasse 10, B.P. 2699, 3001 *Berne*.
- SYRIAN ARAB REPUBLIC — Syrian Arab Red Crescent, Bd Mahdi Ben Barake, *Damascus*.
- TANZANIA — Tanzania Red Cross National Society, Upanga Road, P.O.B. 1133, *Dar es Salaam*.
- THAILAND — The Thai Red Cross Society, Paribatra Building, Central Bureau, Rama IV Road, *Bangkok 10330*.
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- TUNISIA — Tunisian Red Crescent, 19, rue d'Angleterre, *Tunis 1000*.
- TURKEY — The Turkish Red Crescent Society, Genel Baskanligi, Karanfil Sokak No. 7, 06650 *Kizilay-Ankara*.
- UGANDA — The Uganda Red Cross Society, Plot 97, Buganda Road, P.O. Box 494, *Kampala*.
- UNITED ARAB EMIRATES — The Red Crescent Society of the United Arab Emirates, P.O. Box No. 3324, *Abu Dhabi*.
- UNITED KINGDOM — The British Red Cross Society, 9, Grosvenor Crescent, *London, S.W.1X. 7EJ*.
- USA — American Red Cross, 17th and D Streets, N.W., *Washington, D.C. 20006*.
- URUGUAY — Uruguayan Red Cross, Avenida 8 de Octubre 2990, *Montevideo*.
- U.S.S.R. — The Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., I, Tcheremushkinskii proezd 5, *Moscow, 117036*.
- VENEZUELA — Venezuelan Red Cross, Avenida Andrés Bello, N.º 4, Apartado, 3185, *Caracas 1010*.
- VIET NAM (Socialist Republic of) — Red Cross of Viet Nam, 68, rue Ba-Triêu, *Hanoi*.
- WESTERN SAMOA — Western Samoa Red Cross Society, P.O. Box 1616, *Apia*.
- YEMEN (Republic of) — Yemeni Red Crescent Society, P.O. Box 1257, *Sana'a*.
- YUGOSLAVIA — Red Cross of Yugoslavia, Simina ulica broj 19, *11000 Belgrade*.
- ZAIRE — Red Cross Society of the Republic of Zaire, 41, av. de la Justice, Zone de la Gombe, B.P. 1712, *Kinshasa*.
- ZAMBIA — Zambia Red Cross Society, P.O. Box 50 001, 2837 Saddam Hussein Boulevard, Longacres, *Lusaka*.
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